REPORTS

OF

Cases Argued and Determined

IN THE

COURT of CLAIMS

OF THE

STATE OF ILLINOIS

VOLUME 18

Containing cases in which opinions were filed and orders of dismissal entered, without opinion, between July 1, 1948 and June 30, 1949.

SPRINGFIELD, ILLINOIS
1949

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PREFACE

The opinions of the Court of Claims herein reported are published by authority of the provisions of Section 18 of an Act entitled **"An** Act to create the Court of Claims, to prescribe its powers and duties, and to repeal an Act herein named," approved July **1'7, 1945.**

EDWARD J. BARRETT,

Secretary of *State and* ***EX*** *Officio Clerk of the Court* of *Claims.*

OFFICERS OF THE COURT

JUDGES

ROBERT P. ECKERT, JR., Freeport, Illinois
Chief Justice to March 31, 1949

FRED P. SCHUMAN, Granite City, Illinois
Chief Justice, April 1, 1949

W. W. DAMRON, Harrisburg, Illinois
Judge to March 31,1949

ROBERT L. LANSDEN, Cairo, Illinois
Judge, April 1, 1949

CLARENCE N. BERGSTROM, Chicago, Illinois
Judge to March 31,1949

F. DONALD DELANEY, Joliet, Illinois
Judge, April 1, 1949

GEORGE F. BARRETT, *Attorney General* to January 10, 1949
IVAN A. ELLIOTT, *Attorney General,*
January 10, 1949

EDWARD J. BARRETT, *Secretary of State and*
Ex Officio Clerk of the Court

BELLE P. WHITE, *Deputy Clerk*
Springfield, Illinois

RULES OF THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

Adopted pursuant to "An Act to create the Court of Claims, to prescribe its powers and duties, and to repeal an Act herein named." (Approved July 17, 1945. L. 1945, p. 660.)

TERMS OF COURT

Rule 1. The Court shall hold a regular session at the Capital of the State on the second Tuesday of January, May and November of each year, and such special sessions at such places as it deems necessary to expedite the business of the Court.

PLEADINGS

Rule 2. Pleadings and practice at common law as modified by the Civil Practice Act of Illinois shall be followed except as is herein otherwise provided.

Rule 3. The original and five copies of all pleadings shall be filed with the Clerk and the original shall be provided with a suitable cover, bearing the title of the Court and cause, together with a proper designation of the pleading printed or plainly written thereon.

Rule 4. (a) Cases shall be commenced by a verified complaint which shall be filed with the Clerk of the Court. A party filing a case shall be designated as the claimant and the State of Illinois shall be designated as the respondent. The Clerk will note on the complaint and each copy the date of filing and deliver one of said copies to the Attorney General.

(b) Only a licensed attorney and an attorney of record in said case will be permitted to appear for or on behalf of any claimant, but a claimant, although not a licensed attorney, may prosecute his own claim in person. All appearances, including substitution of attorneys, shall be in writing and filed in the case.

(c) The complaint shall be printed or typewritten and shall be captioned substantially as follows:

IN THE COURT OF CLAIMS OF THE
STATE OF ILLINOIS

A. B.,
Claimant
vs.
STATE OF ILLINOIS,
Respondent
} NO.

Rule 5. (a) The claimant shall state whether or not his claim has been presented to any State department or officer thereof, or to any person. corporation or tribunal, and if so presented, he shall state when, to whom, and what action was taken thereon.

(b) The claimant shall in all cases set forth fully in his petition the claim, the action thereon, if any, on behalf of the State, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of the claim or any part thereof or interest therein has been made, except as stated in the petition; that the claimant is justly entitled to the amount therein claimed from the State of Illinois, after allowing all just credits; and that claimant believes the facts stated in the petition to be true.

(c) If the claimant bases his complaint upon a contract or other instrument in writing a copy thereof shall be attached thereto for reference.

Rule 6. (a) A bill of particulars, stating in detail each item and the amount claimed on account thereof, shall be attached to the complaint in all cases.

(b) Where the claim arises under the Workmen's Compensation Act or the Occupational Diseases Act, the claimant shall set forth in the complaint all payments, both of compensation and salary, which have been received by him or by others on his behalf since the date of the injury; and he shall also set forth in separate items the amount incurred, and the amount paid for medical, surgical and hospital attention on account of his injury, and the portion thereof. if any, which was furnished or paid for by the respondent.

Rule 7. If the claimant be an executor, administrator, guardian or other represeiitative appointed by a judicial tribunal, a duly authenticated copy of the record of appointment must be filed with the complaint.

Rule 8. If the claimant die pending the suit the death may be suggested on the record. and the legal representative, on filing

a duly authenticated copy of the record of appointment as executor or administrator, may be admitted to prosecute the suit by special leave of the Court. It is the duty of the claimant's attorney to suggest the death of the claimant when that fact first becomes known to him.

Rule 9. Where any claim has been referred to the Court by the Governor or either House of the General Assembly, any party interested therein may file a verified complaint at any time prior to the next regular session of the Court. If no such person files a complaint, as aforesaid, the court may determine the case upon whatever evidence it shall have before it, and if no evidence has been presented in support of such claim, the case may be stricken from the docket with or without leave to reinstate, in the discretion of the Court.

Rule 10. A claimant desiring to amend his complaint, or to introduce new parties may do so at any time before he has closed his testimony, without special leave, by filing five copies of an amended complaint, but any such amendment or the right to introduce new parties shall be subject to the objection of the respondent, made before or at final hearing. Any amendments made subsequent to the time the claimant has closed his testimony must be by leave of Court.

Rule 11. The respondent shall answer within thirty days after the filing of the complaint, and the claimant shall reply within fifteen days after the filing of said answer, unless the time for pleading be extended; provided, that if the respondent shall fail so to answer. a general traverse or deniel of the facts set forth in the complaint chall be considered as filed.

EVIDENCE

Rule 12. At the next succeeding term of court after a case is at issue, the Court, upon call of the docket. shall set the same for hearing.

Rule 13. All evidence shall be taken in writing in the manner in which depositions in chancery are usually taken. All evidence when taken and completed by either party shall be filed with the Clerk on or before the first day of the next succeeding regular session of the Court.

Rule 14. All costs and expenses of taking evidence on behalf of the claimant shall be borne by the claimant, and the costs and expenses of taking evidence on behalf of the respondent shall be borne by the respondent, except in cases arising under the Workmen's Compensation and Occupational Diseases Acts.

Rule 15. If either party fails to file the evidence as herein required, the Court may, in its discretion, proceed with its determination of the case.

Rule 16. All records and files maintained in the regular course of business by any State department, commission, board or agency of the respondent and all departmental reports made by any officer thereof relating to any matter or case pending before the Court shall be prima facie evidence of the facts set forth therein; provided, a copy thereof shall have been first duly mailed or delivered by the Attorney General to the claimant or his attorney of record.

ABSTRACTS AND BRIEFS

Rule 17. The claimant in all cases where the transcript of evidence exceeds twenty-five pages in number shall furnish a complete typewritten or printed abstract of the evidence, referring to the pages of the transcript by numerals on the margin of the abstract. The evidence should be condensed in narrative form in the abstract so as to present clearly and concisely its substance. The abstract must be sufficient to present fully all material facts contained in the transcript and it will be taken to be accurate and sufficient for a full understanding of such facts, unless the respondent shall file a further abstract, making necessary corrections or additions.

Rule 18. When the transcript of evidence does not exceed twenty-five pages in number the claimant may file the original and five copies of such transcript in lieu of typewritten or printed abstracts of the evidence, otherwise the original and five copies of an abstract of the evidence shall be filed with the Clerk. The original shall be provided with a suitable cover, bearing the title of the Court and case, together with the name and address of the attorney filing the same printed or plainly written thereon.

Rule 19. Each party may file with the Clerk the original and five copies of a typewritten or printed brief setting forth the points of law upon which reliance is had, with reference made to the authorities sustaining their contentions. Accompanying such briefs there may be a statement of the facts and an argument in support of such briefs. The original shall be provided with a suitable cover, bearing the title of the Court and case, together with the name and address of the attorney filing the same printed or plainly written thereon. Either party may waive the filing of his brief and argument by filing with the Clerk a written notice and five copies to that effect.

Rule 20. The abstract, brief and argument of the claimant must be filed with the Clerk on or before thirty days after all evidence has been completed and filed with the Clerk, unless the time for filing the same is extended by the Court or one of the Judges thereof. The respondent shall file its brief and argument not later than thirty days after the filing of the brief and argument of the claimant, unless the time for filing the brief of claimant has been extended, in which case the respondent shall have a similar extension of time within which to file its brief. Upon good cause shown further time to file abstract, brief and argument or a reply brief of either party may be granted by the Court or by any Judge thereof.

Rule **21.** If either party shall fail to file either abstracts or briefs within the time prescribed by the rules, the Court may proceed with its determination of the case.

EXTENSION OF TIME

Rule **22.** Either party, upon notice to the other party, may make application to this Court, or any Judge thereof, for an extension of time for the filing of pleadings, abstracts or briefs.

MOTIONS

Rule **23.** Each party shall file with the Clerk the original and five copies of all motions presented. The original shall be provided with a suitable cover, bearing the title of the Court and case, together with the name and address of the attorney filing the same printed or plainly written thereon.

Rule **24.** In case a motion to dismiss is denied, the respondent shall plead within thirty days thereafter, and if a motion to dismiss be sustained, the claimant shall have thirty days thereafter within which to file petition for leave to amend his complaint.

ORAL ARGUMENTS

Rule **25.** Either party desiring to make oral argument shall file a notice of his intention to do so with the Clerk at least ten days before the session of the Court at which he wishes to make such argument.

REHEARINGS

Rule **26.** A party desiring a rehearing in any case shall, within thirty days after the filing of the opinion, file with the Clerk the original and five copies of his petition for rehearing. The

petition shall state briefly the points supposed to have been overlooked or misapprehended by the Court, with proper reference to the particular portion of the original brief relied upon, and with authorities and suggestions concisely stated in support of the points. Any petition violating this rule will be stricken.

Rule 27. When a rehearing is granted, the original briefs of the parties and the petition for rehearing, answer and reply thereto shall stand as files in the case on rehearing. The opposite party shall have twenty days froin the granting of the rehearing to answer the petition, and the petitioner shall have ten days thereafter within which to file his reply. Neither the claimant nor the respondent shall be permitted to file more than one application or petition for a rehearing.

Rule **28.** When a decision is rendered against a claimant, the Court, within thirty days thereafter, may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

RECORDS AND CALENDAR

Rule **29.** (a) The Clerk shall record all orders of the Court, including the final disposition of cases. He shall keep a docket in which he shall enter all claims filed, together with their number, date of filing, the name of claimants, their attorneys of record and respective addresses. **As** papers are received by the Clerk, in course. he shall stamp the filing date thereon and forthwith mail to opposing counsel a copy of all orders entered, pleadings, motions, notices and briefs as filed; such mailing shall constitute due notice and service thereof.

(b) Within ten days prior to tlie first day of each session of the Court, the Clerk shall prepare a calendar of the cases set for hearing, and of the cases to be disposed of at such session. and deliver a copy thereof to each of the Judges and to the Attorney General.

Rule **30.** Whenever on peremptory call of tlie docket any case appears in which no positive action has been taken, and no attempt made in *good* faith to obtain a decision *or* hearing of the same, the Court may, on its own motion, enter an order therein ruling the claimant to show cause on or before the first day of the next succeeding regular session why such case should not be dismissed for want of prosecution and stricken from the docket. Upon the claimant's failure to take some affirmative action to discharge or comply with said rule, prior to the first day of the next regular

session after the entry of such order, such case may be dismissed and stricken from the docket with or without leave to reinstate on good cause shown. On application and a proper showing made by the claimant the Court may, in its discretion. grant an extension of time under such rule to show cause. The fact that any case has been continued or leave given to amend, or that any motion or matter has not been ruled upon will not alone be sufficient to defeat the operation of this rule. The Court may, during the second day of any regular session, call its docket for the purpose of disposing of cases under this rule.

FEES AND COSTS

Rule **31.** The following schedule of fees shall apply:

Filing of complaint (except cases under the Workmen's Compensatioii Act and the Occupational Diseases Act) $10.00

Certified copies of opinions:

Five pages or less.....	.$ 0.25
For more than five pages and not more than ten pages. .	**0.35**
For more than ten pages and not more than twenty pages	0.45
For more than twenty pages.....	0.50

Rule **32.** Every claim cognizable by the Court and not otherwise sooner barred by law,* shall be forever barred from prosecution therein unless it is filed with the Clerk of the Court within two years after it first accrues, saving to infants, idiots, lunatics, insane persons and persons under other disability at the time the claim accrues two years from the time the disability ceases.

ORDER OF **THE** COURT

The above and foregoing rules were adopted as the rules of the Court of Claims of the State of Illinois on the 11th day of September. **A.** D. 1945, to be in full force and effect from and after the first day of November. A. D. 1945.

* See limitation provisions **of** specific statutes, including Workmen's Compensation and Occupational Diseases Acts.

COURT OF CLAIMS LAW

AN ACT *to create the Court of Claims, to prescribe its powers and duties, and to repeal an act herein named.*

Section 1. The Court of Claims, hereinafter called the Court, is created. It shall consist of three judges, to be appointed by the Governor by and with the advice and consent of the Senate, one of whom shall be appointed chief justice. In case of vacancy in such office during the recess of the Senate, the Governor shall make a temporary appointment until the nest meeting of the Senate, when he shall nominate some person to fill such office. If the Senate is not in session at the time this Act takes effect, the Governor shall make temporary appointments as in case of vacancy.

Section 2. The term of office of each judge first appointed pursuant to this Act shall commence July 1, 1945 and shall continue until the third Monday in January, 1949, and until a successor is appointed and qualified. After the expiration of the terms of the judges first appointed pursuant to this Act, their respective successors shall hold office for a term of four years from the third Monday in January of the year 1949 and each fourth year thereafter and until their respective successors are appointed and qualified.

Section 3. Before entering upon the duties of his office, each judge shall take and subscribe the constitutional oath of office and shall file it with the Secretary of State.

Section 4. Each judge shall receive a salary of $4,000.00 per annum payable in equal monthly installments.

Section 5. The Court shall have a seal with such device as it may order.

Section 6. The Court shall hold a regular session at the Capital of the State beginning on the second Tuesday of January, May and November, and such special sessions at such places as it deems necessary to expedite the business of the Court.

Section 7. The Court shall record its acts and proceedings. The Secretary of State, ex-officio, shall be clerk of the Court, but may appoint a deputy, mho shall be an officer of the Court, to act in his stead. The deputy shall take an oath to discharge his duties faithfully and shall be subject to the direction of the Court in the performance thereof.

The Secretary of State shall provide the Court with a suitable court room, chambers and such office space as is necessary and proper for the transaction of its business.

Section 8. The Court shall have jurisdiction to hear and determine the following matters:

A. All claims against the State founded upon any law of the State of Illinois, or upon any regulation thereunder by an executive or administrative officer or agency.

B. All claims against the State founded upon any contract entered into with the State of Illinois.

C. All claims against the State for damages in cases sounding in tort, in respect of which claims the claimants would be entitled to redress against the State of Illinois, at law or in chancery, if the State were suable, and all claims sounding in tort against The Board of Trustees of the University of Illinois; provided, that an award for damages in a case sounding in tort shall not exceed the sum of $2,500.00 to or for the benefit of any claimant. The defense that the State or The Board of Trustees of the University of Illinois is not liable for the negligence of its officers, agents, and employees in the course of their employment shall not be applicable to the hearing and determination of such claims.

D. All claims against the State for personal injuries or death arising out of and in the course of the employment of any State employee and all claims against The Board of Trustees of the University of Illinois for personal injuries or death suffered in the course of, and arising out of the employment by The Board of Trustees of the University of Illinois of any employee of the University, the determination of which shall be in accordance with the substantive provisions of the Workmen's Compensation Act or the Workmen's Occupational Diseases Act, as the case may be.

E. All claims for recoupment made by the State of Illinois against any claimant.

Section 9. The Court may:

A. Establish rules for its government and for th ere@-lation of practice therein; appoint commissioners to assist the Court in such manner as it directs and discharge them at will; and exercise such powers as are necessary to carry into effect the powers herein granted.

B. Issue subpoenas to require the attendance of witnesses for the purpose of testifying before it, or before any judge of the Court, or before any notary public, or any of its commissioners, and to require the production of any books, records, papers or documents that may be material or relevant as evidence in any matter pending before it. In case any person refuses to comply with any subpoena issued in the name of the chief justice, or one of the judges, attested by the clerk, with the seal of the Court attached, and served upon the per-

son named therein as a summons at common law is served, the circuit court of the proper county, on application of the clerk of the Court, shall compel obedience by attachment proceedings, as for contempt, as in a case of a disobedience of the requirements of a subpoena froin such Court on a refusal to testify therein.

Section '10. The judges, commissioners and the clerk of the Court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of them.

Section **11.** The claimant shall in all cases set forth fully in his petition the claim, the action thereon, if any, on behalf of the State, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested ; that no assignment or transfer of the claim or any part thereof or interest therein has been made, except as stated in the petition; that the claimant is justly entitled to the mount therein claimed from the State of Illinois, after allowing all just credits; and that claimant believes the facts stated in the petition to be true. The petition shall be verified, as to statements of facts, by the affidavit of the claimant, his agent, or attorney.

Section **12.** The Court may direct any claimant to appear. upon reasonable notice, before it or one of its judges or commissioners or before a notary and be examined on oath or affirmation concerning any matter pertaining to his claim. The examination shall be reduced to writing and be filed with the clerk of the Court and remain as a part of the evidence in the case. If any claimant. after being so directed and notified, fails to appear or refuses to testify or answer fully as to any material matter within his knowledge, the Court may order that the case be not heard or determined until he has complied fully with the direction of the Court.

Section **13.** Any judge or conimissioner of the Court may sit at any place within the State to take evidence in any case in the Court.

Section 14. Whenever any fraud against the State of Illinois is practiced or attempted by any claimant in the proof, statement, establishment, or allowance of any claim or of any part of any claim. the claim or part thereof shall be forever barred from prosecution in the Court.

Section 15. When a decision is rendered against a claimant, the Court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

Section 16. Concurrence of two judges is necessary to the decision of any case.

Section 17. Any final determination against the claimant on any claim prosecuted as provided in this Act shall forever bar any further claim in the Court arising out of the rejected claim.

Section 18. The Court shall file with its clerk a written opinion in each case upon final disposition thereof. All opinions shall be compiled and published annually by the clerk of the Court.

Section 19. The Attorney General, or his assistants under his direction, shall appear for the defense and protection of the interests of the State of Illinois in all cases filed in the Court, arid mag make claim for recoupment by the State.

Section 20. At every regular session of the General Assembly, the clerk of the Court shall transmit to the General Assembly a complete statement of all decisions in favor of claimants rendered by the Court during the preceding two years, stating the amounts thereof, the persons in whose favor they were rendered, and a synopsis of the nature of the claims upon which they were based. At the end of every term of Court, the clerk shall transmit a copy of its decisions to the Governor, to the Attorney General, to the head of the office in which the claim arose, to the State Treasurer, to the Auditor of Public Accounts, and to such other officers as the Court directs.

Section 21. The Court is authorized to impose, by uniform rules, a fee of $10.00 for the filing of a petition in any case; and to charge and collect for each certified copy of its opinions a fee of twenty-five cents for five pages or less, thirty-five cents for more than five pages and not more than ten pages, forty-five cents for more than ten pages and not more than twenty pages, and fifty cents for more than twenty pages. All fees and charges PO collected shall be forthwith paid into the State Treasury.

Section 22. Every claim cognizable by the Court and not otherwise sooner barred by law shall be forever barred from prosecution therein unless it is filed with the clerk of the Court within two years after it first accrues. saving to infants, idiots, lunatics, insane persons and persons under other disability at the time the claini accrues two years from the time the disability ceases.

Section 23. It is the policy of the General Assembly to make no appropriation to pay any claini against the State, cognizable by the Court, unless an award therefor has been made by the Court.

Section 24. "An Act to create the Court of Claims and to prescribe its powers and duties," approved June 25, 1917, as amended, is repealed. All claims pending in the Court of Claims created by the above Act shall be heard and determined by the Court created by this Act in accordance with this Act. All of the records and property of the Court of Claims created by the Act herein repealed shall be turned over as soon as possible to the Court created by this Act.

TABLE OF CASES REPORTED IN THIS VOLUME

F

G

H

I

J

K

L

M

O

P

R

S

T

V

W

CASES ARGUED AND DETERMINED IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

(No. 4050—Claim denied.)

NELSON POTTER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 11, 1948.

Motion of Claimant to set aside Opinion denied September 21, 1948.

MESSRS. FEARER AND NYE, Attorneys for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

FINES MADE VOLUNTARILY FOR VIOLATION OF ILLINOIS GAME CODE NOT RECOVERABLE—*where the claimant voluntarily paid to Justice of Peace Court, fines imposed for violation of the State Game Code and such fines were forwarded to the State Treasurer, such fines cannot be recovered.* Where the claimant voluntarily paid fines to Justice of Peace Court totaling $150.00 and court costs totaling $27.60 **for** violation of the State game laws and appealed therefrom to the Circuit Court of Ogle County, which court ordered the fines returned. Held on motion of the Attorney General to dismiss the complaint, the claimant having paid the fine and not being required by law to do so while appeal was pending before the Circuit Court, which the law under such circumstances considers a voluntary payment, that recovery cannot be had.

BERGSTROM, J.

The complaint of Nelson Potter, filed November 28, 1947, alleges that claimant paid fines totaling $150.00, and court costs totaling $27.60, or a total of $177.60, in three cases wherein complaints were brought by an employee of the State of Illinois, Department of Conservation, for violation of the game laws of the State of Illinois. It is further alleged that appeals were prosecuted to the Circuit Court of Ogle County, bearing the docket numbers 3048, 3049 and 3050, and that in each case, on motion of the defendant, the court found that a cause of action was not stated against the defendant,

that the complaint and warrant failed to properly charge the defendant with violation of the game laws of the State of Illinois, and therefore ordered the fines and costs paid returned to the defendant, Nelson Potter, claimant herein.

Claimant further alleges that the fine and costs in each case were forwarded by the justice of the peace to the State Treasurer of the State of Illinois for the Department of Conservation, and have not been returned to him.

This case is now before us on motion to dismiss made by the Attorney General on the ground that the moneys paid by claimant were paid voluntarily and not under any mistake of fact. The complaint does not set up which provisions of the game law the claimant was charged with violating, his plea thereon, and the fact showing the perfection of his appeal; nor does it state said fines were paid under a mistake of fact, and why.

Under Sec. 8 of the Game Code (Ch. 61, Par. 142, Illinois Revised Statutes 1947), it was the duty of the justice of the peace to remit the said fines to the Department of Conservation thirty **(30)** days after their collection, or be subject to severe penalty for his failure to do so; and Sec. 19 of the Game Code (Ch. 61, Par. 153, Illinois Revised Statutes **1947)** provides that the said fines shall be deposited with the State Treasurer, to be used for the purposes in said statute provided.

When claimant paid his fine to the justice of the peace, it became his duty to immediately dispose of it as by statute provided. However, there is no reason why the claimant should have paid his fine and costs in view of the fact that the record shows that he appealed the decision of the justice of the peace to the Circuit Court of Ogle County. The statute plainly gives him this right

of appeal (Ch. 79, Par. 173, Illinois Revised Statutes 1947); and upon his filing of appeal bond it provides that the justice of the peace shall suspend all proceedings in the case (Ch. 79, Par. 116, Illinois Revised Statutes 1947). The filing of an appeal, and approval of the appeal bond, operates as a *supersedeas.*

Claimant is charged with knowledge of his rights provided by law, and payments made under such circumstances cannot be said to have been made under a mistake of fact. The law does not require a defendant who takes an appeal from a justice of the peace to pay either the costs or the fine imposed by the justice of the peace, but if the said cost or fine is paid, it cannot be recovered upon a subsequent acquittal. *McArthur* v. *Artx,* 129 Ill. 352; *Anderson* v. *Shubert,* 158 Ill. 75; and where a fee or tax is paid voluntarily, with knowledge of the facts, the same cannot be recovered back, in the absence of a statute authorizing recovery. *American Can Co.* v. *Gill,* 364 Ill. 254; *Cooper Kandey &* Co. v. *Gill,* 363 Ill. 418; *Warren* v. *State,* 14 C.C.R. 84; *Orchard Theatre Corp.* v. *State,* 11 C.C.R. 271; *Whiting Paper* Co. v. *State,* 13 C.C.R. 136.

It is apparent that claimant herein was not required to pay either the fine or the costs, and we must conclude that he voluntarily paid the said moneys to the justice of the peace with knowledge of the facts, which the justice forwarded to the Department of Conservation as the statute requires, and which the Department has deposited in the Treasury of the State of Illinois. The claimant had knowledge of his right to appeal, as evidenced by his subsequent action, and he should have had knowledge that he was not obligated to pay the fine or costs while his appeal was pending. To have made such a payment, even though it may have been by inad-

vertence on his part, nevertheless was mistake or error on his part, which the law under such circumstances, considers as a voluntary payment. The rule is the same where such payment is made under a mistake of law.

In the case of *Furgeson* v. *Butler County,* 247 S. W. 795, the Missouri court said:

"If plaintiff in the instant case had been imprisoned for failure to pay the excessive fine imposed upon him, he would be entitled to his discharge therefrom under a writ of *habeas corpus,* but the payment of the excessive fine was made in full knowledge of all the facts and by mutual agreement and without duress. The payment was made under a mistake of law. The general rule is that recovery cannot be had under such circumstances."

For the reasons stated, the motion of respondent to dismiss must be sustained.

Case dismissed.

(No. 4047—Claim denied.)

PAULINE SMITH, Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion pled June 10, 1948.

Petition of Claimant for Rehearing denied September 21, 1948.

LYCURGUS J. CONNER, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and HON. **WILLIAM** L. MORGAN, Assistant Attorney General, for Respondent.

NEGLIGENCE—FAILURE TO SHOW—*State not liable for injuries sustained, when evidence fails to show negligence of the State.* Where the claimant sought to recover damages for injuries sustained in falling on a stairway maintained by the Kankakee State Hospital, held that the claimant, having shown no failure on the part of the respondent to exercise ordinary care in the maintenance of the stairway, she cannot recover.

ECKERT, C. J.

On December 23, 1946, the claimant, while visiting her daughter, who was a patient at Kankakee State Hos-

pital, descended a stairway to the basement of a ward building known as No. 4 North to inspect her daughter's clothing. She fell at the bottom of the stairs.

In her complaint, which was filed in this Court on November 6, 1947, claimant alleges that the negligence of the respondent in the maintenance of this stairway was the proximate cause of her fall and subsequent injury; that the stairway was poorly and insufficiently lighted; that the balustrade along the side of the stairway ended at the next to the last step; that the bottom step was not painted the same color as the other steps, but was painted the same color as the floor of the basement; that because of this coloring, and because of poor and insufficient lighting, the last step of the stairway appeared to be a part of the basement floor.

Claimant further alleges that as a result of her fall she fractured her right ankle, causing a permanent injury, which has prevented her from following her usual occupation as a housewife, and which has necessitated the expenditure of large sums of money for the assistance of others to perform her duties; that she has been permanently incapacitated; that she has suffered great physical pain and mental anguish, and will continue to do so in the future; and that she expended large sums of money for medical services. She seeks damages in the amount of $5,000.00.

The stairway upon which the accident occurred, leads from the first floor of the ward building to the basement. It is thirty-nine inches wide, and of wood construction except for the base step which is concrete. It is straight in its course; all steps conform to standard practice in construction, having a seven inch riser and an eleven inch tread. All walls and ceilings are painted in light colors. No claim is made that the stairway was

not in good repair.

At the hearing before Commissioner East, the claimant, testifying on her own behalf, stated that she descended the stairs, preceded by a nurse, to inspect her daughter's clothes; that she held onto the banister; and that "when I turned to loose myself, why I was in mid air." She testified that the banister did not extend the full length of the stairs; that it stopped at the second step from the floor; that she thought she had reached the floor when she was on the last step; that the color of the bottom step was the same color as that of the floor; that the color of the other steps was different; and that the stairway was dimly lighted. She did not know whether an electric light was lighted or not. She stated that she had gone down the same stairway before, but she did not know how often; that the stairway was not as well lighted on the day of the accident as when she had gone down before.

Dr. George W. Morrow, testifying on behalf of the respondent, stated that the stairway was straight, consisting of fifteen steps leading from the first to the basement floor; that the steps were thirty-nine inches in width, constructed along standard lines, with an eleven inch tread and a seven inch riser; that the stairway was in excellent state of repair; that the first fourteen steps were constructed of wood, and the base step of cement; that the stairway is used by patients and employees, it being their only means of going from the first to the basement floor for meals and baths. Dr. Morrow further testified that a ceiling light, which is about a foot and a half from the center of the stairway, is always kept burning; that there is also light from the dining room shining through the lattice work which separates the stairway from the dining room. He also stated that

the stairway was not poorly lighted; that the wooden steps were covered with dark blue linoleum; that the newel post on the bottom stair is about eight inches square and covers a large part of the end of the step; and that the balustrade ends in the newel post.

Ora Trego, testifying on behalf of the respondent, stated that she preceded the claimant down the stairway at the time of the accident; that the stairway was in a good condition of repair, and was well lighted; that the stairway was used by the patients and the employees of the institution; that it is a stairway leading to the door of the dining room, which is on the right; that from the stairway you can see into the dining room through lattice work; that the claimant sustained her fall about two o'clock in the afternoon; that the hall light was on at the time of the accident; that the wooden steps were painted a dark color; that the last step was painted a lighter color, probably a brownish red; and that the stairway was lighted by a 50 or 60 watt bulb.

The report of the Director of the Department of Public Welfare, which forms a part of the record in this case, and the report of the commissioner who carefully examined the stairway, fully substantiate the testimony of Dr. Morrow and Ora Trego.

It is clear from the record that claimant sustained a painful and serious injury as a result of her fall, but it is also clear that claimant has failed to prove any negligence on the part of the respondent. To recover, claimant was required to prove that the respondent permitted this stairway to be and remain in a dangerous and unsafe condition. The evidence is to the contrary. The stairway was in an excellent state of repair; it was well lighted, and equipped with an adequate handrail. The construction of the stairway, and of the handrail,

ending as it did on the newel post on the bottom step, was standard, usual, and customary. Aside from claimant's own statement, the record is uncontroverted that the stairway was well lighted. It was not a dark, seldom used, poorly constructed basement stairway, but a well lighted, well constructed stairway, in constant use by patients and employees of the institution. The record is clear that the respondent exercised due care and caution in the maintenance of this stairway, having in mind the welfare and safety of patients, employees, and guests of the institution.

The claimant, having shown no failure upon the part of the respondent to exercise ordinary care in the maintenance of the stairway in question, can not recover. It is unnecessary for the Court, for the purposes of this decision, to determine whether claimant was upon the premises as a mere licensee or by invitation, express or implied. It is also unnecessary for the Court to determine whether or not claimant's alleged incapacity is a result of the accident.

For the reasons stated, an award is denied.

(No. 3025—Claimant awarded $2,207.80.)

ELVA JENNINGS PENWELL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinaon filed September 21, 1948.

JOHN W. PREIHS, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and HON. C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when additional allowance will be made under.* Where an employee of the Illinois Soldiers' and Sailors' Children's School incurred serious permanent injuries and had been awarded (*Penwell* **v.** *State. 11* C.C.R. 365) $5,500.00 for total permanent

disability, $8,215.93 for necessary medical, surgical and hospital services, and an annual pension of $600.00, and thereafter received allowances for further medical hospital and nursing services. Held that where there is no change in physical condition, claimant was entitled to additional allowances for medical and nurses' services under the Act, and the Court reserved for future determination claimant's need for further medical, surgical and hospital services.

ECKERT, C. J.

Claimant was injured on February 2, 1936, in an accident arising out of and in the course of her employment as a supervisor at the Illinois Soldiers' and Sailors' Children's School at Normal, Illinois. The injury was serious, causing temporary blindness and general paralysis. The facts are fully detailed in the case of *Penwell* v. State, 11 C.C.R. 365, in which an award was made to the claimant of $5,500.00 for total permanent disability, $8,215.95 for necessary medical, surgical, and hospital services expended or incurred to and including October 22, 1940, and an annual pension of $660.00. On February 10, 1942, a further award was made to claimant for medical and hospital expenses incurred from October 22, 1940 to January 1, 1942, in the amount of $1,129.82. On March 10, 1943, a further award was made to claimant for medical and hospital expenses from January 1, 1942, to December 31, 1942, in the amount of $1,164.15. On March 15, 1944, a further award was made to claimant for medical and hospital expenses from January 1, 1943, to and including September 30, 1943, in the amount of $853.07. On April 17, 1945, a further award was made to claimant for medical and nursing expenses incurred from October 1,1943, to and including February 28, 1945, in the amount of $1,955.29. On September 12, 1946, a further award was made to claimant for medical and nursing expenses incurred from February 28, 1945 to and including April 1, 1946, in the amount of $1,646.12.

On June 5, 1947 a further award was made to claimant for medical and nursing expenses incurred from April 1, 1946 to and including April 1, 1947, in the amount of $2,108.30. Claim is now made for an additional award of $2,207.80 for medical, hospital, and nursing expenses from April 1, 1947 to and including April 1, 1948.

Claimant remains totally paralyzed from the waist down, the paralysis being of a spastic type; her physical condition has not improved. She has no control over her lower limbs, nor over her urine and feces. From April 1, 1947 to and including April 1, 1948, she has been required, to relieve her of her injury, and to prevent deformity and to stimulate circulation, and for relief of bedsores, to employ and receive medical services and nursing attention. She remains helpless, requiring the services of nurses or attendants to move her to and from her bed, to change her bed clothing at least three or four times a day, to administer light treatment to the affected parts of her paralyzed body, and to rub her body with ointments prescribed by her physician. Because of the complete paralysis of her lower abdomen and legs, the functioning of her kidneys and bladder is impaired, and medical attention is required to flush these organs and to prevent infection arising from her impaired circulation and paralysis. The services of a physician are needed almost daily and must be rendered in her home.

Claimant has therefore employed a physician on a monthly basis at a charge of $90.00 per month, which is a lesser rate than ordinarily charged, and for which she seeks reimbursement, in the total sum of $1,080.00. Claimant also seeks reimbursement, at the rate of seventy-five cents per day, in the total amount of $273.75 for board and room of attending nurses. Such expenditure obviates the employment of both a day and a night

ldition, claimant has expended, for nursiiig
.25, and for drugs and supplies, $142.80.
uitted to the Court, with her verified peti-
iginal receipts and vouchers showing payment
respective items.

ourt has heretofore held that under Section
a) of the Workmen's Compensation Act,
ed to such care as is reasonably required
the effects of the injury. (*Penwell* v.
here has been no change in claimaiit's
physical c n to justify the denial of an award at
this time. T services claimed appear to have been
reasonably required and the charges to be reasonable
and just.

Award is, therefore, made to the claimant for medical and nursing expenses from April **1, 1947,** to and including April **1,** 1948, in the sum of $2,207.80, which has accrued and is payable forthwith. The Court reserves for future determination claimant's need for further medical, surgical and hospital services.

(No. **4008—Claim** deniad.)

GRACE **GAMMON,** Claimant, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion filed September 21, 1948.

J. KELLY SMITH, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and HON. C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*compensation for temporary total disability—when not allowable under provisions of.* When the claimant, while acting as an attendant at Manteno State Hospital on February **24, 1945,** was struck at the frontal part of the skull by a patient, and in falling, in consequence thereof, her left breast struck a bench, and claimant remained on duty until November **25, 1945,** when given

Where claimant failed
and complaint was filed almo
ight to file claim is barred.

file a claim is barred. Unless application for compensation is filed within one year after the date of the accident or within one year after the date of the last payment of compensation, where any has been paid, right to file claim is barred.

ECKERT, C. J.

On February 24, 1945 the claimant, Grace Gammon, an employee of the respondent in the Department of Public Welfare, while acting as an attendant at Manteno State Hospital, was struck by a patient, and fell against a bench. She was struck at the lower frontal part of the skull near the bridge of her nose; in falling her left breast struck the bench.

Following the injury, claimant went home and consulted a doctor, but she required no further medical attention or treatment until May, 1945. During the period of February 24, 1945 to May, 1945, although, because of pains in the head, she took sedatives, which she got without prescription, she remained on duty at the hospital, excepting for four days from February 24th to February 28th.

From May, 1945 to November 1945, claimant was treated by Dr. Phipps for these pains, which were practically continuous. On November 25, 1945, at the request of Dr. Phipps, she was given a leave of absence to December 10, 1945 for rest. During that time she took chiropractic treatments,

Claimant returned to work on December 10,1945 and

worked until February 4, 1946 when she was granted a further leave of absence until July 25, 1946. During this period her left breast was removed by surgery. When claimant returned to work on July 25th she worked only four days, and from July 29, 1946 until September 15, 1947, she was under the care of Dr. Otis Hudson. She again returned to work on September 15th.

No claim is made for medical or hospital services or for permanent disability, but claimant seeks an award for fifty-three weeks temporary total disability.

At the time of the accident claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State; the accident arose out of and in the course **of** the employment.. During the year immediately preceding the injury, claimant's annual earnings were $1,074.20. She had one child under sixteen years of age dependent upon her for support.

Claimant, however, has not complied with the provisions of the Act. The report of the Department of Public Welfare, which fornis a part of the record, states that no report of claimant's injury is on file in the Department, and Dr. Walter H. Baer, Superintendent of the Manteno State Hospital, finds no evidence of any report submitted on the injury. The physicians of the hospital have no record of treating claimant for this injury.

Furthermore, Mrs. Gammon's complaint was filed on February 7, 1947, almost two years after the date of the alleged injury. Under the provisions of Section 24 of the Workmen's Compensation Act, the right to file a claim for compensation is barred unless application for compensation is filed within one year after the date of the accident, where no compensation has been paid, or within one year after the date of the last payment of compensation, where any has been paid. In her complaint, claimant

states that she received no compensation payments. The report of the Department of Public Welfare is to like effect. It is obvious that her claim is barred by Section 24 of the Act. An award must therefore be denied.

The taking and transcribing of the testimony before Commissioner Jenkins was by Grace Moyers, of Mound City, Illinois, who has submitted a bill for her services in the amount of $54.00. The court finds these charges usual, fair, and customary, and an award is therefore made in favor of Grace Moyers in the amount of **$54.00,** payable forthwith.

(No. 4054—Claimant awarded $729.16.)

COLLEGE INN FOOD PRODUCTS COMPANY, AN ILLINOIS CORP.. Claimant, *vs* STATE OF ILLINOIS, Respondent.

Opinion filed September 21, 1948.

SONNENSCHEIN, BERKSON, LAUTMANN, LEVINSON AND MORSE (SHERMAN P. CORWIN, of Counsel), Attorneys for Claimant.

HON. GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN AND C. ARTHUR NEBEL, Assistant Attorneys General, for Respondent.

ART. VI, SEC. 5 OF THE ILLINOIS LIQUOR CONTROL ACT—*return of the unexpired portion of the license* fee *allowed.* Where the Illinois Liquor Control Commission ruled under Article VI, Section 5, of the Illinois Liquor Control Act, that the claimant should discontinue the manufacture and rectification of alcoholic beverages, the claimant being a subsidiary of the Hotel Sherman, which was issued retailer's license by said commission, held that the claimant was entitled to a refund for the unexpired portion of the license period.

SAME—Where the privilege granted by the license has been revoked by the licensing authority because of some reason other than the fault of the applicant, the courts have consistently allowed the licensee a return of the unexpired portion of the license fee.

DAMRON, J.

The College Inn Food Products Company, an Illinois corporation, filed its complaint on December 17, 1947, to recover an award of $729.16 being the pro rata share of a liquor manufacturer's license fee for the unexpired portion of the license period ending June 30, 1947.

The complaint alleges that claimant is a wholly owned subsidiary of the Hotel Sherman, an Illinois corporation. Claimant applied for a license to manufacture alcoholic beverages for the license period from July 1, 1946 to June 30, 1947, and its check of $2,500.00 tendered in payment for said license payable to the order of the Illinois Liquor Control Commission was deposited with the State Treasurer. In due course a license was issued to claimant.

The record discloses that in each year from the enactment of the Illinois Liquor Control Act in 1934, until March 15, 1947, College Inn Food Products Company, applied for and was issued a license to manufacture alcoholic liquor by the Illinois Liquor Control Commission, and throughout this same period, Hotel Sherman, Inc., the parent corporation of the claimant, applied for and was issued retailer's licenses by the Liquor Control Commission.

Subsequently to the issuance of the license to the claimant by the Liquor Control Commission the commission ruled that claimant should discontinue the manufacture and rectification of alcoholic beverages by March 15, 1947. This rule was based on Article VI, Section 5, of the Liquor Control Act, which incidentally has been a part of the law since the enactment of the Act in 1934. Throughout this entire twelve year period it was never suggested to claimant until shortly before March 15,1947 that the operation of the claimant might be contrary to

law. Subsequent to the ruling of the Liquor Control Commission that this claimant should cease the manufacture of alcoholic liquor and to surrender its license, Sec. 3 (e) of Art. VI of the Illinois Liquor Control Act was amended, so as to specifically establish that the claimant, as a subsidiary of Hotel Sherman, Inc., a retailer, could not be issued a manufacturer's license. This amendment became effective in July 1947. The record further discloses that pursuant to the ruling of the Illinois Liquor Control Commission, claimant discontinued the exercise of its license, so notified the commission, surrendered its license, ceased operation, and requested a refund for the pro rata portion of the $2,500 fee it had paid basing its claim on the unexpired portion of the license year, namely, from March 15 to June **30, 1947.**

Respondent filed a motion to dismiss the complaint and both parties filed exhaustive written statements, briefs, and arguments in support of and in opposition to the motion to dismiss.

Respondent in its brief and argument contended (a) that the payment by claimant was voluntarily made with knowledge of the facts; (b) that the mistake, if any, was one of legal interpretation and (c) that claimant failed to come within any of the enumerated statutory categories which authorized refunds, such as death, insolvency, or bankruptcy.

In support of respondent's motion to dismiss, it cited *American Can Company* v. **Gill,** 364 Ill. **254;** *Cooper Kanaley and Company* v. **Gill,** 363 Ill. 418; *Warren* v. *State,* 14 C.C.R. 84; *Chicago Cold Storage Warehouses Company* v. *State,* 13 C.C.R. Ill.; *Wright and Wagner Dairy Company* v. *State,* 12 C.C.R. 149; and *Orchard Theatre Company* v. *State,* **11** C.C.R. 271.

Claimant contended that the licensee may recover

the unexpired portion of the sum paid where it has been denied benefits of license by the same authority which granted it because of facts over which the licensee had no control. Claimant also distinguished the authorities cited by the respondent on the grounds that in each of these cases the licensee had control over the circumstances which prevented the licensee from enjoying the benefits of the license and voluntarily relinquished the privilege granted by the license. Claimant further contended that specific statutory authority for a refund is required only in the event of a voluntary surrender of the licenses and in support of its, position cited 53 C.J.S. "Licenses", Sec. 57 b (1) *Martel* v. *City of East St. Louis,* 94 Ill. 67; *People* v. *McBride,* 234 Ill. 146, 84 N.E. 865; *Lydick* v. *Korner,* 15 Neb. 500, 20 N.W. 26; *Scott* v. *Board of Trustees,* 132 Ky. 616, 116 S.W. 788; *Allsman* v. *Oklahoma City,* 21 Okla. 142, 95 Pac. 468; *Pearson* v. *City of Seattle,* 14 Wash. 438, 44 Pac. 884; *Sharp* v. *The City of Carthage,* 48 Mo. App. 26; *Charles Blum Co.* v. *Town of Hastings,* 76 Fla. 7, 79 So. 442; *Chamberlain* v. *City of Tecumseh,* 43 Neb. 221, 61 N.W. 632; *Roberts* v. *City of Boise,* 23 Idaho 716,132 Pac. 306; *Olympia Brewing Co.* v. *State,* 102 Wash. 494, 173 Pac. 430; *Zeglin* v. *Board of Commissioners of Carver County,* 72 Minn. 17, 74 N.W. 901; *Hirn* v. *State* of *Ohio,* 1 Ohio St. 15.

This Court after giving careful consideration to the respective briefs, arguments and the numerous authorities cited therein overruled respondent's motion to dismiss.

The evidence in this case was taken in Chicago on May 14, 1948, and substantially establishes the facts, without dispute, as alleged in the complaint. A witness called on behalf of the respondent testified that a demand was made on the Illinois Liquor Control Commission for

payment of refund for the unused portion of the license fee which had been issued to claimant. This witness testified the refund was not given to claimant for the reason the appropriation had elapsed out of which refund could have been paid.

Where the privilege granted by the license has been revoked by the licensing authority because of some reason other than the fault of the applicant, the courts have consistently allowed the licensee a return of the unexpired portion of the license fee.

The applicable rule is stated in Corpus Juris Secundum (53 C.J.S. "Licenses", Sec. 57 b (1))

"The unearned portion of the money paid for a license may be recovered by the licensee, where the license has become inoperative by acts or circumstances over which he had no control and without his volition."

After a careful consideration of the law applicable to this claim and the evidence submitted to us we hold that claimant is entitled to a refund for the unexpired portion of the license period.

An award is therefore hereby entered in favor of College Inn Food Products Company, Inc., in the sum of $729.16.

(No. 4063—Claimant awarded $1,011.40.)

ELSIE CAUFIELD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 21, 1948.

PAULSON, MORGAN & JORDAN (MR. W. BEN MORGAN of Counsel), Attorneys for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and HON. WILLIAM J. COLOHAN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when allowance will be made under.* Where the claimant while working as an attendant at the Elgin

State Hospital slipped and fell breaking her right wrist and was hospitalized in connection therewith, and subsequently after returning to work tripped on a mattress, fell and broke her left wrist, which injury also required hospitalization, held on the record to have suffered a 10% permanent partial loss of the use of her right arm and a 20% permanent partial loss of the use of her left arm, and was entitled to an award in the aggregate amount of $1,011.40 under the Act.

ECKERT, C. J.

On January 20, 1947, Elsie Caufield, an employee of the respondent in the Department of Public Welfare, while working as an attendant at the Elgin State Hospital assisting patients from the dining room at Hirsh cottage, slipped and fell, breaking her right wrist. Immediately thereafter she was hospitalized and the wrist placed in a cast. On February 13, 1947 the cast was removed and the fracture was re-set. Claimant returned to work on April 1, 1947.

On July 14, 1947, while putting patients to bed at the same institution, claimant tripped on a mattress on the floor, fell and broke her left wrist. The wrist was placed in a cast and claimant returned to work on September 1, 1947.

At the time of both injuries, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accidents and claims for compensation were made within the time provided by the Act. The injuries arose out of and in the course of the employment. .

Claimant, at the hearing before Commissioner Blumenthal, testifying on her own behalf, stated, in reference to her right wrist, that she cannot hold a paring knife, cannot peel anything, and finds it very difficult to sew or wash; that she has lost strength in her right wrist and hand, and has pains in her right upper arm; that she can

not hold anything tightly in her right hand, and cannot close the fingers on her right hand.

Testifying in reference to her left wrist, claimant stated that she suffers pain in her wrist and arm if she pushes or carries anything; that she flexes her fingers with some difficulty, but can flex her fingers of her left hand better than her fingers of her right hand. She stated that she cannot grasp objects firmly with her left hand.

Dr. Lyman Wood Smith, testifying on behalf of claimant, stated that he first examined her in his office on July 14, **1947.** The examination disclosed pain and disability of the left wrist. X-rays disclosed a fracture which was reduced under local anesthesia and a cast applied. The cast was changed eleven days later and the forearm and hand mere held in an aluminum splint for another two weeks. A subsequent examination by Dr. Smith on December 16, **1947** revealed no limitation of motion in claimant's left shoulder, left elbow, or in any of the finger joints, but disclosed a marked deformity of the left wrist with considerable shortening of the radius. The wrist was held at 32 degrees of radial deviation, being a deviation of **30** degrees from normal. This examination also showed a one-fourth inch atrophy of the left forearm as compared to the right. Extension of the wrist was 85 degrees but flexion was limited to 35 degrees and these was only 10 degrees of adduction. Dr. Smith also testified that there was tenderness to pressure over the anterior aspect of the radial carpal joint and the grasp of the hand was weak. X-rays taken on this latter examination showed a healed Colles type of fracture with malunion and complete disruption of the distal radial ulnar joint, and an unhealed fracture on top of the ulnar styloid process. Dr. Smith, after the examination, con-

cluded that claimant had suffered a 20% permanent partial disability of the left wrist.

Dr. Smith also testified that on April 30, 1948 he examined claimant's right wrist. He stated that the examination disclosed the right wrist to be held at 18 degrees of radial deviation; that motions of the right wrist were: ulnar deviation 30 degrees; extension 40 degrees; flexion 40 degrees. There was also stiffness in the fingers which could be flexed to within one inch of the palm. The loss of motion in the fingers was found to be primarily in the interphalangeal joints. Rotation of the forearm was complete and the grasp of the right hand was weak. Dr. Smith testified that X-rays revealed an ununited fracture of the tip of the ulnar styloid process and a complete loss of the normal forward tilt of the radius at the radial carpal joint. Dr. Smith stated that claimant had suffered a permanent partial disability in her right wrist of about five to ten per cent.

Dr. Charles K. Bush, Jr., testifying on behalf of respondent, stated that on January 20, 1947 he examined claimant and found a Colles fracture of the right wrist; that he took X-rays and thereafter applied a plastic cast. The X-rays showed multiple fractures of the distal end of the radius with several fracture lines extending into the wrist joint. There was impaction and slight angulation of the distal fragments. The styloid process showed a transverse fracture with slight separation. Dr. Bush stated that a later examination on February 11, 1947 showed more impaction of the fracture, and a radial displacement of the hand. A re-examination after reposition in the cast on February 24th showed the fragments in good alignment. Dr. Bush stated that in his opinion claimant had suffered a five to ten per cent permanent partial disability of her right hand.

Dr. Bush also testified that subsequent to claimant's injury on July 14,1947, it was found that she had a Colles fracture of the left wrist; that from his examination of X-rays taken of claimant's left wrist he found evidence of an old fracture of both bones of the forearm with a separation of the styloid process of the ulna and shortening of the radius, with angulation toward the radial side, and a deformity in which the carpal bones do not make good contact with the end of the ulna. In Dr. Bush's opinion, claimant has suffered a twenty per cent permanent partial disability of the left wrist.

Claimant's earnings for the year prior to January 20,1947 were $1479.25 and her earnings for the year prior to July 14, 1947 were $1543.55. Claimant had no children under sixteen years dependent upon her for support. During the period of January 20, 1947 *to* and including April 1, 1947, claimant received on account of temporary total disability the sum of $306.13. During the period of July 14, 1947, to and including September 1, 1947, claimant received on account of temporary total disability the sum of $240.00.

From the record, and from the report of Commissioner Blumenthal who examined both of claimant's wrists, the court is of the opinion that claimant has suffered a 10% permanent partial loss of use of her right arm and a 20% permanent partial loss of use of her left arm. Claimant's weekly compensation rate for the first accident injury is $17.06 and her weekly compensation rate for her second injury is $19.29.

,Claimant was temporarily totally disabled for a period of ten weeks from January 20th, 1947 to April 1st, 1947, for which period she was entitled to total compensation in the amount of $170.60. She was paid during this period $306.13, or an over-payment of $135.53.

Claimant was temporarily totally disabled for a period of seven weeks from July 14, 1947 to September 1, 1947, for which period she was entitled to total compensation in the amount of $135.03. She was paid during this period $240.00, or an over-payment of $104.97.

Claimant is entitled to an award for 10% permanent partial loss of use of her right arm for a period of 22½ weeks at $17.06 per week, or a total of $383.85, from which must be deducted the over-payment of $135.53, leaving a balance of $248.32.

Claimant is entitled to an award for 20% permanent partial loss of use of her left arm for a period of 45 weeks at $19.29 per meek, or $868.05, from which must be deducted the over-payment of $104.97, leaving a balance of $763.08.

An award is therefore entered in favor of Elsie Caufield in the aggregate amount of $1,011.40, all of which has accrued and is payable forthwith.

The taking and transcribing of the testimony before Commissioner Blumenthal was by A. M. Rothbart who has submitted a bill for his services in the amount of $43.10. The court finds these charges usual, fair, and customary, and an award is therefore made in favor of A. M. Rothbart in the amount of $43.10, payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4064—Claim denied.)

ALICE COGDILL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 21, 1948.

Ross E. ABMBRUSTER, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*award disallowed where claimant fails to prove her right to award by objective testimony.* The claimant, head nurse at the Alton State Hospital, claimed allowance for alleged injury involving the coccyx and the lower lumbar spine, when she fell on snow and ice on the grounds of the hospital. Held that since the medical testimony does not show, as required by the Act, that the claimant is either totally or partially disabled, her testimony that she is unable to do any type of work and suffers pain is insufficient; that her testimony is to be construed as subjective and that under Section 8, Par. (i-3) of the Act, she must prove her right to award by objective testimony, which she has failed to do.

SAME—In order to make an award for permanent and total disability, the claimant must show by a preponderance of evidence that she is "wholly and permanently incapable of work" (Sec. 8, Par. (f) of the Act, and to be entitled to compensation for partial incapacity, claimant must show by a preponderance of the evidence the difference in what she did earn before the injury and the amount she is able to earn afterwards. Sec. 8, Par. (d) **of** the Act.

DAMRON, J.

This is a claim for permanent and total disability.

The record consists of a complaint, departmental report, transcript of evidence, commissioner's report, claimant's brief, statement and argument, and respondent's brief, statement, and argument.

At the hearing the parties hereto entered into a stipulation that the above named claimant was injured on March 1, 1947, while on the institution grounds at the Alton State Hospital, while she was enroute from the nurses' home where she resided on said grounds to the administration building where she had her office and

that the accident arose out of and in the course of her employment where she had her office. It is further stipulated by and between the parties hereto that she earned $3,460.00 during the year immediately prior to her injury and that subsequent to her injury the respondent paid her $1,332.00 "for disability time"; that the respondent had notice of the accident in 30 days; that claim for compensation was made within six months of the injury and that the claimant had no children under the age of 16 years dependent upon her for support.

There is but one question therefore for this Court to determine, that is the nature and extent of her injury and whether or not said injury has caused her to be totally and permanently disabled as defined under the terms and provisions of the Workmen's Compensation Act of this State. (Section 8, Par. f.)

The claimant testified at the hearing that she was 45 years of age at the time of the injury and was chief nurse at the Alton State Hospital; that she suffered an injury on said date which involved the coccyx and the lower lumbar spine when she fell on the snow and ice on the grounds of the respondent. She further testified and the record shows that from the date of her injury to the taking of the testimony she had not returned to her employment.

Dr. H. R. McCarroll treated the claimant after her injury but did not testify; however, three letters from him were introduced in evidence being dated March 12, 1947, May 13, 1947, and March 13, 1948. The letter of March 13,1948 is as follows:

"This patient has sustained injury to her lower lumbar spine and this may well represent an early intervertebral disc lesion. Her findings are sufficient at present that the present plan of conservative treatment should be continued indefinitely. I do not think she is able to return to work and whether or not this will be possible in the future, I am unable to state."

The letter dated March 20, 1947 stated that claimant had pain in the region of the coccyx but that X-rays showed no evidence of fracture and in his letter dated May 15, 1947, he said that "there has been some improvement in these pains" and "that there was no tenderness of the lower lumbar spine, nor muscle spasms and she had good motion in that region."

In order for this Court to make an award for permanent and total disability the claimant must show by a preponderance of evidence that she is "wholly and permanently incapable of work." (Section 8, Par. (f) Workmen's Compensation Act.) To be entitled to compensation for partial incapacity, claimant must show by a preponderance of evidence, the difference in what she did earn before the injury and the amount she is able to earn after the injury. (Section 8, Par. (d) Workmen's Compensation Act.)

The medical testimony in this case does not show, as is required by the Act, that the claimant is either totally disabled or partially disabled. While it is true that claimant testified that she is unable to do any type of work and that she suffers pain, yet that is insufficient. Her testimony is to be construed as subjective and under Section 8, Par. (i-3) of the Act she must prove her right to an award by objective testimony and this she has failed to do.

We have repeatedly held and the Supreme Court of this State has held that liability under the Workmen's Compensation Act cannot rest upon imagination, speculation, or conjecture but must be based on a preponderance of the evidence, *Sanitary Dist.* vs. *Ind. Comm.*, 343 Ill. 236; *Mandel* vs. *State*, 12 C.C.R. 29; *Ruddy* vs. *State*, 16 C.C.R. 57, on this record as we find it we are compelled to deny an award to the claimant.

Award denied.

Mrs. William Schmidt transcribed the testimony in the above entitled cause and has made a charge of Twenty-one ($21.00) Dollars for such services. We find that said amount is fair, reasonable, and customary for the services rendered by her.

An award is therefore hereby entered in favor of Mrs. William W. Schmidt, Godfrey, Illinois, in the sum of $21.00.

(No. 4071—Claim denied.)

MANDEL & KAISER, A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 21, 1948.

HAROLD T. BERG, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and HON. C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

DIRECTOR, DEPARTMENT OF PUBLIC WORKS AND BUILDINGS—*employee, bridge engineer cannot exercis epowers* of *Director so as to bind the State.* Where a bridge engineer of the Division of Waterways, Department **of** Public Works and Buildings, after the award for construction **of** a model of a bridge upon specifications issued by said Department, approved increase in size of model involving additional cost, it was held that the powers **of** the Director cannot be exercised by an administrative employee **of** the Department, and that the modification **of** the contract was without authority binding upon the respondent.

SAME—**A** contract entered into by the Director of Public Works and Buildings, in accordance with the statute, cannot be modified at will by an employee of the Department. Where public officers derive their powers from statute, all persons dealing with them are bound to take notice of the statutory limitations, and are bound to see that such officers are acting within the scope of their authority.

ECKERT, **C. J.**

The claimant, Mandel & Kaiser, a corporation, is engaged in the architectural business in the City of Chicago, Illinois. In its complaint filed on February 6, **1948,**

it alleges that during the year 1947 it received from the Division of Waterways, Department of Public Works and Buildings, of the State of Illinois, a copy of specifications for the building of an animated architectural scale model of the Ruby Street Bridge located in Joliet, Illinois; that thereafter it submitted a proposal for the construction of such model to Arthur O. Stauder, bridge engineer, employed in the Division of Waterways, Department of Public Works and Buildings of the Stake of Illinois; that such proposal was submitted prior to February 15, 1947 as required by the specifications.

Claimant further alleges that its proposal was accepted by W. A. Rosenfield, Director of the Department of Public Works and Buildings of the State of Illinois, on March 12, 1947; that upon acceptance of its proposal claimant obtained aerial photographs of the Ruby Street Bridge, and upon blowing up these photographs to scale, discovered that the specifications provided for a model size too small to make the necessary exhibits as required by the original specification order; that Arthur O. Stauder, bridge engineer, examined this detail, concurred in the conclusions of the claimant, and ordered that the total size of the completed model, including approaches, be increased to eight by sixteen feet to fit the constructed model to the actual needs of the State.

The claimant further alleges that the increased cost of such modification was to be submitted in a composite statement after delivery and acceptance of the model; that claimant increased the model size as ordered, in the time required; that the model was accepted as satisfactory on July 31, 1947 by Arthur O. Stauder, bridge engineer; and that said Arthur O. Stauder was the authorized agent of the respondent in all of these transactions. Claimant further alleges that the modification

necessarily increased the cost of the completed model in the amount of $3,367.55; that after delivery of the model, claimant's original estimate in the amount of $5,559.00 was paid to claimant by the respondent, but that its claim for the additional amount was refused.

The respondent has filed its motion to dismiss the complaint on the grounds that the claimant's contract with the respondent was completed in accordance with its terms; that the material provisions of that contract can not be changed or waived by an administrative assistant without power to contract for the respondent; and that the alleged increase o fthe contract price is illegal and in contravention of the Illinois statutes because it is in excess of the funds provided by appropriation.

This Court has frequently held that the powers of a director of a department can not be exercised by an administrative employee of the department. *Busekrus* vs. *State*, 13 C.C.R. 59; *Richardson* vs. *State*, **14** C.C.R. **3.** In the case of *L. B. Strandberg and Son* Co. vs. *State*, 13 C.C.R. 49, the Court stated:

"The court is of the opinion that the duties of C. M. Hathaway, the construction engineer, were purely administrative; that his attempt to waive the release provision **of** the contract was not an administrative act, but was an attempt to exercise the power of the Director of the Department to contract on behalf of the State of Illinois. To conclude otherwise would enable an employee of a department to contract an indebtedness against the State wholly without authority."

Nor could the bridge engineer in this case exercise the power of the director of the department to contract on behalf of the State of Illinois. **A** contract entered into by the Director of Public Works and Buildings, in accordance with statute, can not be modified at will by an employee of the department. Where public officers derive their powers from statute, all persons dealing with

them are bound to take notice of the statutory limitations, and are bound to see that such officers are acting within the scope of their authority. *L. B. Stranberg and Son* Co. v. *State,* supra.

It is not necessary to consider the other contentions of the respondent, because the Court is of the opinion that the modification of the contract in question was without authority binding upon the respondent. The motion of the respondent is therefore granted. Case dismissed.

(No. 4073—Claim denied.)

ANNA CARRANO, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 21, 1948.

ANTHONY M. ANZALONE, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, **and** C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

DAMAGES—*award* ***for*** *injury clue* ***to*** *falling* ***on*** *waxed* ***floor*** ***disallowed.*** Where the claimant while visiting her son at Illinois State Penitentiary at Statesville slipped and fell on a waxed and highly polished floor, and in consequence is unable to carry on her duties as a housewife and was compelled to expend large sums for medical services, held that keeping the floor cleaned and waxed is not a condition sufficient to warrant a finding that the fall was caused by negligence. ***Mack vs.*** *Woman's Club of Aurora,* 303 Ill. App. **217.** Claim denied.

DAMRON, **J.**

This is a claim of Anna Carrano against the respondent, the State of Illinois, for personal injury sustained in a fall at the Illinois State Penitentiary at Statesville, on February **26, 1946.**

The complaint alleges that. the claimant had obtained permission to and did visit her son on that day and while proceeding down a corridor in said institution,

slipped and fell on a waxed floor, thereby sustaining injuries to her head and right leg.

She files this claim for damages on the theory that the respondent was negligent in having the floor waxed, and highly polished, which by inference rendered it slippery, dangerous, and unsafe. The complaint further alleges that because of said injuries, the claimant was unable to carry on her duties as a housewife and to render household services to her husband and family, and that she was compelled to expend great sums of money for medical attention due to said injury and is still receiving medical attention for said injury caused by the careless and negligent acts of the respondent through its agents and servants.

A case very similar to this one arose in *Mack* vs. *Woman's Club* of *Aurora,* reported in **303** App., 217.

In that case the plaintiff filed suit against the club for personal injury sustained by her in a fall on the club room floor of defendant's building, while she was attending a meeting in the club room, in the city of Aurora. She slipped and fell on a waxed floor, thereby sustaining a broken hip.

She instituted a suit for damages, claiming that the defendant was negligent in having the floor waxed, which thus rendered it dangerous and unsafe. The case was tried by a jury, which returned a verdict in favor of the plaintiff for $3,500.

In reversing the judgment, the Appellate Court held that the waxing of floors is a common practice, and too well known a custom to be considered negligence in the absence of evidence tending to prove some positive negligent act or omission on the part of the owner of the premises . . . under such circumstances, the Court held that she must be held to have assumed an- risks

eries be made have no force and effect so as to vary the terms of a written contract entered into by his superiors. Where the deliveries of coal were made at the direction of the district engineer and there was no modification of the contract, the claimant can only recover at the contract price.

SUPPLIES—MATERIALS—LAPSE OF APPROPRIATION—*when award may be made.* Where materials or supplies have been properly furnished and a bill therefor has been submitted within a reasonable time, but the same was not approved and vouchered for payment before the lapse of the appropriation therefor, an award of the reasonable value of the supplies will be made where there are sufficient funds remaining in the appropriation.

BERGSTROM, J.

Claimant filed its claim on April 19, 1948 for payment of 26,820 pounds of coal delivered to respondent on December 4, 1946 and 71,200 pounds of coal delivered on December 20, 1946, to the Division of Highways at Effingham, Illinois.

The claim consists of the complaint, departmental report, stipulation, claimant's waiver of brief, and statement, brief and argument of respondent.

The facts, as disclosed by the record, are that claimant submitted a bid to supply respondent an estimated 250 tons of coal at Effingham, Illinois, at $6.75 per ton net, which bid was accepted by respondent on or about September 9, 1946. Pursuant to this contract claimant delivered 26,820 pounds of coal on December 4, 1946 and 71,200 pounds of coal on December 20, 1946, and at the time the aforementioned deliveries were made a strike of major proportions existed in the coal mining industry, and the mine from which claimant had agreed to supply the coal was closed because of said strike. Claimant, however, delivered coal to respondent from another mine, which was accepted, used and found to be of satisfactory specifications. Shortly after delivery invoices were submitted by claimant, but were returned as being incorrect, and corrected invoices were not received until after the

appropriation out of which they could be paid had lapsed. However, at the time said appropriation lapsed, sufficient funds existed to pay claim of the claimant.

In addition to the contract price of $6.75 per ton, claimant contends it is entitled to certain extra charges, incurred by reason of making the deliveries from another mine because of the strike. It is the contention of respondent that claimant is entitled to the reasonable, cash market value of the coal supplied, not, however, to exceed the contract price; that claimant is entitled to receive the sum of $330.82 computed on the basis of $6.75 per ton for 98,200 pounds of coal delivered, instead of the amount of $366.00 claimed.

There is no strike clause in the contract excusing non-performance under such circumstances, and, in the absence of such a clause, we are of the opinion that it does not excuse the non-performance of said contract. It is a general rule of contracts that if a party desires not to be bound in the event of a happening of a contingency, it must so provide in the contract. This, the contract does not do. The manner of contracting for coal and the maximum price which the State may pay therefor is covered by statute, Ch. 127, Pars. 28 and 30, Illinois Revised Statutes 1947, and, under said statute, all contracts for coal are subject to the approval of the Governor, and the maximum price set for the purchase of Illinois coal is $7.00 per ton.

The record shows that the deliveries of the coal in question were made at the direction of the district engineer, but the record does not show, nor is it alleged, that a subsequent or modified contract was made covering the increased cost and transportation charges. The district engineer's orders would have no force and effect, as he had no authority to vary the terms of a written

contract entered into by his superiors. Under the circumstances, we are of the opinion that all claimant can recover for the coal delivered is at the rate of $6.75 per ton.

With reference to the remaining question of nonpayment because of lapsed appropriations, this Court has repeatedly held that where materials or supplies have been properly furnished to the State, and a bill therefor has been submitted within a reasonable time, but the same was not approved and vouchered **for** payment before the lapse of the appropriation from which it is payable, an award of the reasonable value of the supplies will be made, where, at the time the expenses were incurred there were sufficient funds remaining unexpended in the appropriation to pay the same. *Johnson* v. *State,* 16 C.C.R. 96; *The Texas* Co. v. *State,* 16 C.C.R. 55; *Staadard Oil* Co. v. *State,* 16 C.C.R. 85; *Northwest Ignition. & Radiator Service* v. *State,* 16 C.C.R. 91; and *Shell Oil* Co. v. *State,* 16 C.C.R. 257. This case comes within the rule above set forth.

An award is therefore entered in favor of claimant, Wenthe Brothers Co., a corporation, for the sum of Three Hundred Thirty and 82/100 Dollars **($330.82).**

(No. **410'7—Claimant awarded $264.62.)**

DANIEL L. **MURPHY,** Claimant, *vs.* **STATE** OF ILLINOIS, Respondent.

Opinion filed September 21. 1948.

DANIEL L. MURPHY, Pro Se.

HON. GEORGE F. BARRETT, Attorney General, and **C.** ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*automobile accident — where claim for medical services and supplies will be allowed.* **Where** an **employee**

of the Illinois Public Aid Commission was injured, while driving on an assignment for the commission, caused by approaching car skidding across the ice covered highway and into the path of the claimant's car, and the medical expenses incurred were authorized by said commission, an award of the balance due on such medical expenses after deducting payments made thereon by the Illinois Mutual Casualty Company is reasonable and may be paid under the Act out of funds deposited with the State Treasurer under the provisions of Par. 181 (a), Chap. 127, Illinois Revised Statutes.

BERGSTROM, J.

This claim was filed on July 21, 1948 for payment of part of the medical expenses incurred by claimant by reason of an accident which occurred on November 24, 1947.

The record consists of the Complaint, Departmental Report, Stipulation that Departmental Report shall constitute the record, Claimant's Waiver of Brief and Respondent's Waiver of Brief.

Departmental Report and statements attached thereto show that claimant was injured in an automobile accident on November 24, 1947, while driving from his headquarters in Peoria, on an assignment for the Illinois Public Aid Commission, to Vermilion County, Illinois. The highway was ice-covered, and an approaching car skidded across the road into the path of claimant's car. He injured his left knee to such an extent that it mas necessary for him to be hospitalized and under medical care for some time. He was paid full salary while under disability, covering the period from November 24, 1947 to March 1, 1948, and no claim is made for temporary total disability.

From the evidence, we find that the accident arose out of and in the course of claimant's employment, and that the claim. was made and complaint filed in apt time to satisfy the jurisdictional requirements of the Workmen's Compensation Act, and that the medical expenses

incurred were authorized by the Illinois Public Aid Commission. Claimant paid Dr. Edward J. McNulty $4.77 for first aid treatment and $5.75 to Stensel's Funeral Home for one pair of crutches and one cane. The invoice of St. Francis Hospital, Peoria, Illinois, amounted to $249.10, of which $134.00 was paid by the Illinois Mutual Casualty Company, leaving a balance of $115.10 unpaid; and the invoice of Dr. Hugh E. Cooper, Peoria, Illinois, amounted to $169.00, of which $30.00 was paid by the Illinois Mutual Casualty Company, leaving the unpaid balance $139.00; all of which amounts we find are reasonable and fair.

An award is therefore made to claimant, Daniel L. Murphy, in the sum of $264.62; $115.10 of this sum for the use of St. Francis Hospital, Peoria, Illinois, and $139.00 of this sum for the use of Dr. Hugh E. Cooper, Peoria, Illinois; and direct that this award shall be paid out of the funds of the Illinois Public Aid Commission deposited with the State Treasurer, pursuant to the provisions of Par. 181 **(a),** Chap. 127, Illinois Revised Statutes.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3985—Claimant awarded $889.79.)

DAVID F. MALONE, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1948.

JOHN F. GIBBONS, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*claim allowed for injuries sustained whale employed in removing landslides* by *Division of Highways.* Where an employee is injured suffering compound fractures of the left tibia and fibula above the ankle, the finding from the evidence that the claimant suffered a 33⅓% permanent partial loss of the use of his left leg is fair and reasonable and a total allowance was made of $1,045.00 from which was deducted $155.21 paid to him for unproductive time, leaving a balance of $889.79.

BERGSTROM, J.

Claimant, David F. Malone, filed his claim for conipensation under the Workmen's compensation Act for injuries sustained while employed by respondent by the Department of Public Works and Buildings in the Division of Highways.

On June 1, 1943 claimant was one of a group of men removing mud and dirt left on the highway as a result of previous heavy rains. He was using an endloader to clear 'a landslide from S.B.I. Route 100, about nine miles north of Grafton. About 1:30 P.M. claimant drove the endloader to the edge of an embankment to dump a load of debris. As he stopped the machine preparatory to releasing the load, the machine began to tilt forward. Thinking it was going to tip over, he jumped and landed in the muck at the side of the pavement, suffering cornpound fractures of the left tibia and fibula just above the ankle. The proximal ends of the bones protruded into the muck in which claimant had fallen.

There is no question of jurisdiction raised in tlie record and we find from the evidence that claimant was injured out of and during the course of his employment.

Claimant was rendered first aid by Dr. Julius Katz of Grafton, who suggested transfer to St. Joseph's Hospital in Alton. Accordingly, an ambulance was called, and claimant was transported to Alton. While he was enroute, the injury was reported to the Springfield office

of the Division of Highways, and orders were given to transfer claimant to Barnes Hospital, St. Louis, and place him in the care of Dr. J. Albert Key, Professor of Clinical Orthopedics, Washington University. That same evening, Dr. Key reduced the fracture and placed the leg in a cast with traction.

Claimant was under the care of Dr. Key from that time until January 16, 1948, on which date Dr. Key made his final examination. Various complications developed with respect to claimant's injured ankle, and he was confined to the hospital and operated on at six different times. The last operation was performed on March 12, 1947. On January 20, 1948, Dr. J. Albert Key submitted his final report to the Division of Highways, as follows:

"I examined Mr. Malone again on 1-16-48. At this time Mr. Malone complained of pain in the middle of his foot and over the left ilium at the point where the graft was removed. He also complains of tenderness in both scars and states that his left foot and ankle are stiff in the morning on getting up. On examination the wound over the ilium and the wounds in his leg are all healed. Movement in the ankle is almost normal in all directions. The tibia is firmly united and there is some tenderness on deep pressure over the lower scar over the crest of the ilium. X-rays show that a bone graft from the ilium has taken and has completely obliterated the cavity which was present just above the ankle joint. I do not think that Mr. Malone needs any further treatment."

Mr. Malone was also examined by Dr. Oscar P. Hampton, Jr. on February 27, 1948, who made a physical and x-ray examination of claimant and reported as his conclusion, in his report under date of March 1, 1948, as follows:

"The left leg measured three-fourths of an inch shorter than the right. There was a well healed linear scar about 4½ inches long over the antero-medial surface of the upper portion of the leg. Palpation revealed a defect in the underlying bone and he complained of some tenderness on pressure over the lower end of this scar. Over the medial surface of the lower third of the leg there was a broad irregular scar attached to the underlying bone and projecting proximally from

this scar was a well healed linear scar apparently that of an operation. No edema was noted about the leg or ankle but there was some thickening of the soft tissues about the ankle. The left calf measured 1¼ inches smaller in circumference than the right. There was power in all muscle groups of the left leg and foot and sensation was apparently normal.

The range of motion in the left ankle joint was limited to about 50% of that on the opposite side. Dorsal flexion was limited at 90 degrees and plantar flexion at 115 degrees. Inversion of the foot was limited to about 50% of normal, but eversion appeared equal to that on the left. There was minimal restriction of motion in the toes of the left foot.

X-RAY EXAMINATION—X-ray films of the lower two-thirds of the bones of his left leg and of his left ankle joint were made in my office. These reveal an old united fracture of the distal portion of the tibia and fibula. Union of the tibia has occurred with slight posterior angulation.

There is a narrow linear defect in the upper portion of the tibia apparently that created when the bone graft was removed.

CONCLUSIONS—His fracture of the tibia and fibula on the left have solidly united with three-fourths of an inch shortening of the leg, and with about 50% limitation of motion in the left ankle joint. He has a broad, irregular, attached scar over the inner portion of the lower third of the left leg which is of some clinical significance. This scar is susceptible to wounding by relatively minimal trauma. The defect in the upper tibia is of little, if any, clinical significance. Any pain or tenderness about the left wing of the ilium is not to be considered disabling. The present condition of his left leg is probably permanent except that there probably will be some rebuilding of the musculature."

Claimant testified that his leg was painful and sore, swollen and cramps a lot; that it was difficult for him to walk or get around with ease,, and that he had about an 80% loss of the use of his leg. Commissioner Jenkins, from an observation of the injured leg, reported that it shows a depression, discoloration and apparent wasting of tissue and muscle above the left ankle bone on the inside of left leg, approximately one-third of the distance to calf of leg. It was his opinion that claimant suffers a 33-1/3% permanent partial loss of the use of his left leg, and from a review of all the evidence we think this is fair and reasonable, and we so find.

At the time of the injury claimant was married and had one child under sixteen years of age dependent upon him for support. Respondent paid the sum of $1791.48 for medical, hospital and other services covering treatment of claimant. He earned a total of $1620.00 for the year immediately preceding his injury. His compensation rate, therefore, would be the maximum of $15.00, increased by 10%, or to $16.50 per week, the accident having occurred on June 1, 1943. He was paid for his total temporary incapacity for the period of 64 weeks, or until August 22, 1944. The sum paid to him was $1211.21 for this purpose, which was an overpayment of $155.21. His compensation for 33-1/3% permanent partial loss of the use of his left leg would be 63-1/3 weeks at $16.50 per week, or a total sum of $1045.00, from which must be deducted the overpayment of $155.21 paid to him for unproductive time, leaving a balance of $889.79.

An award is therefore allowed in favor of claimant, David F. Malone, in the amount of $889.79, all of which has accrued and is payable forthwith.

Edith Gamerdinger was employed to take and transcribe the testimony in this case and submitted her invoice in the sum of $6.50, which we find is fair, reasonable and customary. An award is also made in favor of Edith Gamerdinger in the sum of $6.50.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4044—Claim denied.)

RUTH SPENCER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1948.

BYRON L. CONNELL, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and HON. C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*Section 29 of the Act bars recovery, where compensation greatly in excess of that allowed by the Act is received by the claimant from sources other than the State.* Where a highway police officer is killed in the course of his employment and his widow and dependents, according to the evidence, received from sources other than the State sums greatly in excess of the aggregate amount of $5,760.00 allowable under the Act, Section 29 of the Act bars recovery.

ECKERT, C. J.

This is a suit brought by Ruth Spencer, the widow of Forrest Spencer, in her own behalf and on behalf of her minor children Buth Beatrice Spencer and Charles Jason Spencer, against the State of Illinois under Section 7a of the Workmen's Compensation Act. The decedent, Forrest Spencer, was employed by the respondent at the time of his death, and had been so employed for more than a year prior thereto, in the Department of Public Safety, Division of State Police, as a Highway Police Officer.

Shortly after three o'clock in the morning, on October 27, 1946, the decedent received a telephone call at his home reporting an automobile accident on S.B.I. Route No. 37 about ⅛th of a mile north of the Village of Olmstead, in Pulaski County, Illinois. Together with Officer Chesley Warren, the decedent drove to the scene of the accident where he found two trucks parked in the lane for south bound traffic and a passenger car in the ditch

on the west side of the highway. The officers parked the police car south of the scene of the accident on the west shoulder of the highway. Officer Warren began an investigation while Officer Spencer, carrying a lighted fuse and flash light, directed traffic from a position at the rear and north of the parked trucks. One of the victims of the accident came to him, stating that her lost purse had been found, and the decedent turned to his left to send word to discontinue the search. As he turned, a car driven by Coy L. Slack of Brownfield, Illinois, approaching from the north, struck the decedent and crushed him between the car and the rear of the truck. Officer Spencer was killed instantly.

In her complaint, filed in this court on October 25, **1947,** the claimant states that as administrator of the estate of Forrest Spencer, she granted a covenant not to sue Coy L. Slack, in consideration of the payment to her as such administrator of the sum of $5,000.00. She alleges that the Director of the Department of Public Safety consented in writing to this settlement, and waived on behalf of the respondent all rights against Coy L. Slack under the Workmen's Compensation Act. She alleges that the $5,000.00 was received by her as administrator, and that she and each of the children received one-third thereof under the laws of descent.

Claimant further alleges that the State Employees' Retirement System of the State of Illinois has failed and refused to pay any part of the pension due claimant as a death benefit, of one-half the monthly salary of the decedent, payable to her each month. Claimant requests an adjudication of her rights to such pension, together with **a** determination of the extent of the legal setoff which respondent may claim to such pension.

At the hearing before Commissioner Jenkins, a purported release signed by the Director of the Department of Public Safety was offered by the claimant, and received in evidence. On cross-examination, claimant was asked whether or not she had received any sums of money on account of the death of her husband from any parties connected "either directly or indirectly with the cause of his death." Over objection of counsel, claimant answered that she had received "from certain taverns under the Dramshop Act" $10,500.00. There is no further evidence regarding the $5,000.00 payment to claimant as administrator, or the $10,500.00 payment made under the Dramshop Act.

At the time of the accident the employer and the employee were operating under the provisions of the Workmen's Compensation Act of this State and notice of the accident and claim for compensation were made within the time required by Section 24 of the Act; the accident arose out of and in the course of decedent's employment. During the year immediately preceding his death, decedent's earnings totalled $2,556.00; any award payable to claimant under the Workmen's Compensation Act would therefore be in the aggregate sum of $5,760.00.

Section **29** of the Workmen's Compensation Act provides that if the death for which compensation is payable under the Act was caused under circumstances creating a legal liability for damages on the part of some person other than the employer to pay damages, such other person not being bound by the act, legal proceedings may be taken against such other person to recover damages, and if an action is brought by a personal representative of a deceased employee, such judgment is obtained and paid, or settlement is made with such other person, either with or without suit, from the amount received by such

personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such personal representative.

It is obvious that the claimant in this case has received on account of the death of her husband moneys greatly in excess of compensation payable under the Workmen's Compensation Act. The court specifically finds: that the amount payable to claimant under the provisions **of** the Workmen's Compensation Act of this State on account of the death of her husband is $5,760.00; that claimant has received, on account **of** the death **of** her husband, moneys in excess of that amount; that Section **29** of the Act therefore bars her recovery against the respondent.

Award denied.

Hugo Antonacci was employed to take and transcribe the evidence at the hearing before Commissioner Jenkins. Charges in the amount of $16.50 were incurred for these services, which charges are fair, reasonable, and customary.

An award is entered in favor **of** Hugo Antonacci in the amount **of** $16.50 payable forthwith.

(No. **4067—Claimant awarded $388.75.)**

EUGENE ROSE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1948.

BEN MORGAN, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and WILLIAM J. COLOHAN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION *Am— disfigurement to be compensable cinder Sec. 8 (c)* of *the Act in addition to being permanent must be*

serious and Before a disfigurement can be considered serious it must be such as affects a man's employment. Where an attendant employed in the Elgin State Hospital was stabbed in the neck by a patient and sustained a permanent scar, held that inasmuch as the claimant was able to return to duty at the hospital after three weeks and left to accept a more lucrative position with the Veterans' Administration and is earning more than when employed, it cannot be reasonably inferred or anticipated that the scar will affect the claimant's capacity to earn or obtain employment, or has seriously disfigured him or caused him to appear unsightly or deformed, and such disfigurement is not compensable under the Act.

SAME—*where tinder the same circumstances the clazmant is entitled to permanent partial loss of the use of arm.* Where the claimant due to the stabbing lost some sensations in certain areas of his hand and arm, an award of 10% of permanent partial loss of the use of the arm will accord claimant just and reasonable compensation for such injury.

DAMRON, **J.**

This complaint filed January **24,** 1948, by Eugene Rose, the above named claimant, seeks compensation for injuries sustained by him on September 8, 1947, by reason of an accident which arose out of and in the course of his employment as an attendant employed by the Department of Public Welfare at the Elgin State Hospital. The evidence was heard July 9, 1948 and transcript thereof filed on July 30, 1948.

It was stipulated that claimant was thirty-seven years of age and had no children under sixteen; that he earned $1,748.00 during the year preceding the accident and was temporarily and totally disabled for a period of three weeks during which time he was paid $108.50, for such period based on a monthly salary of $155.00.

No jurisdictional questions require consideration. The only issue presented is the extent of claimant's disability, if any, as a result of the accident.

Claimant testified that on September 8, 1947, he and a fellow attendant, Ward Murrie, were supervising about fifty patients in the ward. While watching one of the

patients in the bathroom another patient crept up behind the two attendants and stabbed them with a pair of barber scissors. Rose was stabbed in the neck. He bled profusely and was treated by Dr. Charles K. Bush, Jr., staff physician, of the Elgin State Hospital. He was hospitalized a week and returned to duty after three weeks. On June **5, 1948,** he left the State's employ to accept a more lucrative position with the Veterans' Administration.

Claimant testified that previous to the accident he had no disability but since then he claims to experience pain mostly in his right hand. It is numb and tingles and the back of his forearm above the wrist causes him almost constant discomfort. He lacks strength in his hand and in certain areas he has no sensation and cannot distinguish a sharp instrument such as a pin applied to the arm above the wrist, to the back of the hand, or the inside of the wrist. He cannot judge the temperature of water unless it is extremely hot. There is no loss of function or motion in the arm. The condition has not improved since the accident.

Dr. Charles K. Bush, Jr., the treating physician, at the State hospital testified that on September 8, **1947,** he examined claimant and found a puncture wound of the right posterior triangle of the neck about an inch long and 2½ inches deep. At the time he surmised an involvement of the brachial plexus—the network of nerves that run from the spinal cord to the neck that supply the arm. He controlled the bleeding; inserted a drain, closed the wound with interrupted sutures and administered gas bacillus, tetanus antitoxin and penicillin. The report of Dr. Erich Liebert, clinical director, described claimant's sensations of tingling, numbness, etc., and observed that obviously claimant had some

vasomotor disturbance. Dr. Bush was of the opinion the point of the shears had penetrated the sensory nerve roots of the seventh cervical and first thoracic spinal nerves and unless sensation is restored he will have a permanent, partial disability confined to the sensory capacity of the arm but not involving the motor function. The impairment of a sense of pain or of heat or cold might in Dr. Bush's opinion effect the work, of certain persons requiring a delicate sense of feeling. In his opinion no further deterioration can be anticipated but inasmuch as it has not regenerated in this period there will be some permanent partial disability.

In addition to the above condition of the arm Commissioner Blumenthal, who heard the testimony and observed the claimant, described for the record that claimant had an irregular shaped scar, starting about 1½ inches laterally on the right side of the neck from the mid line, descending for about 1½ inches. The upper half of the scar was marked by a white discoloration and scar tissue.

Upon consideration of this record we find no compensation can be awarded claimant for the particular disfigurement noted in this record. It cannot be denied the scar as described on the back of claimant's neck is visible and permanent. However, this Court held in *Tyler* v. *State*, 12 C.C.R. 101, that a disfigurement to be compensable under Sec. 8 (c) of the Workmen's Compensation Act in addition to being permanent must also be serious. In that case we quoted with approval Sec. 272 Angerstein (1930 Ed.) to the effect that before a disfigurement can be considered serious it must be such as affects a man's employment.

The Illinois Supreme Court in *Superior Mining* Co.

v. *Industrial Commission,* 309 Ill. 339, takes a similar view of this question. In that case the Court said:

"The object of workmen's compensation laws is to compensate for loss of earning power resulting from industrial accidents. While it is not necessary that there should be a showing of an actual loss of earning power before compensation can be made for a disfigurement, *(Williams Co.* v. *Industrial Com.,* 303 Ill. 352,) the evidence ought to show that the disfigurement for which compensation is sought bears some relation to the capacity to earn and to secure profitable employment. Where a man has suffered serious injuries to his hands, head or face, it is often true that they are of such a character as to place a man at a decided disadvantage when applying for work, and on that theory it is just and proper that provision should be made for compensation for such disfigurements. The Act does not provide compensation for every mark or scar nor for every disfigurement. A disfigurement is that which impairs or injures the beauty, symmetry or appearance of a person or thing; that which renders unsightly, mis-shapen or imperfect or deforms in some manner. Before compensation can be awarded under the Workmen's Compensation Act there must be a disfigurement, and that disfigurement must be both permanent and serious."

Claimant is now steadily employed and earning, as an attendant at the Veterans' Administration, more than he was earning at the time of this accident. In view of his vocation, and the condition and location of this scar, it cannot be reasonably inferred or anticipated that the scar will ever affect claimant's capacity to earn or obtain employment or that it has seriously disfigured claimant or caused him to appear unsightly or deformed.

It is very difficult on the basis of the evidence to adjudicate the percentage of permanent partial loss of use of claimant's arm. Although the motor function of claimant's arm is not impaired there can be no question that he has lost some sensation in certain areas of his hand and arm. In addition he experiences the discomfort of unnatural numbness and "tingling"—under all the circumstances in our opinion a finding of 10% of permanent partial loss of use of the arm will accord claimant just and reasonable compensation for the injury

sustained in this instance. Claimant's weekly compensation rate is $19.50 and hence a 10% partial loss entitles him to an award of **$438.75.** Claimant was paid $108.50 during his period of temporary total disability. This is $50.00 in excess of the $58.50 compensation to which he was entitled for the three weeks in question. Deducting this excess from $438.75 entitles claimant to $388.75.

An award is therefore entered in favor of claimant Eugene Rose in the sum of Three Hundred Eighty-eight Dollars and Seventy-five Cents ($388.75), all of which has accrued.

A. M. Rothbart and Associates were employed to report the testimony at the hearings before Commissioner Blumenthal and charged the sum of Thirty-four Dollars and Eighty-five Cents for such services.

We find that the last mentioned amount is fair, reasonable, and customary for the services rendered.

An award is therefore entered in favor of **A.** M. Rothbart and Associates in the amount of **$34.85** which is payable forthwith.

These awards are subject to the approval of the Governor as provided in Sec. **3** of "An Act concerning the payment of compensation awards to State employees''.

(No. 4069—Claim denied.)

WARD MURRIE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1948.

BEN MORGAN, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and WILLIAM J. COLOHAN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*involves same accadent as in claim of Eugene Rose V. State of Illinois,* ***No. 4067.*** Claim entered on same grounds as to disfigurement—no claim for disability.

DAMRON, J.

This complaint by Ward Murrie filed January 30, 1948, for an award under the Workmen's Compensation Act involves the same accident in the claim of *Eugene Rose* v. *State,* ***No. 4067,*** opinion delivered at the regular November term of this Court.

On September 8, 1947, while performing his duties as attendant at the Elgin State Hospital, this claimant was stabbed in the neck with a pair of scissors by the same insane patient who at the same time and place similarly attacked and wounded Murrie's fellow attendant, Eugene Rose.

Claimant was stabbed in the left side of his neck necessitating hospitalization for one week. He was off duty and totally disabled for two weeks during which time he received his regular pay of $79.33 at the rate of $170.00 per month. He never resumed employment with the State and prior to the hearing had been continuously employed by an electric company earning substantially more on a piece work basis than the wages he earned from the State.

The only claim asserted by claimant is for compensation because of alleged disfigurement evidenced by the scar resulting from the stabbing.

This scar as described in the transcript of the evidence by the commissioner is as follows: Crescent shaped scar about two inches long and ¼ to ⅜ inch at its widest point commencing about the center of the left side of the neck at a point two inches below the ear lobe extending diagonally down towards the back of the

neck, of light purplish discoloration, slightly raised, one edge of which exhibits scar tissue.

Dr. Charles K. Bush, Jr., stated the stabbing wound healed uneventfully and that the scar would remain in its present condition, neither better or worse.

This case is not distinguishable in any way from the Eugene Rose vs. State, No. 4067, and is governed by the identical reasoning and authorities cited in that opinion, *Superior Mining* Co. vs. *Ind. Com.,* 309 Ill. 339; *Tyler* vs. *State,* **12** C.C.R. 101. The same considerations both factual and legal and the previous decisions which impelled us to hold in that case that the disfigurement was not so serious as to affect claimant's gainful employment and therefore was not compensable under the provisions of Section 8 (c) of the Workmen's Compensation Act, necessarily lead to the same conclusion in the instant case. An award denied.

A. M. Rothbart and Associates were employed to report the testimony at the hearings before Commissioner Blumenthal and charged the sum of Twenty Dollars for such services. These charges are fair and reasonable. An award is entered in favor of A. M. Rothbart & Associates in the amount of $20.00 which is payable forthwith.

(No. 4074—Claimant awarded $651.68.)

CALVIN PIPPIN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion** filed November **9, 1948.

VICTOR LAURIDSEN, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and HON. ARCHIE BERNSTEIN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*award for temporary total disability and permanent and complete loss of the use of first finger allowed under.* Where an employee of the Division of Highways operating a power mowing machine, suffers the loss of one phalange of the first finger of his right hand and is temporarily totally disabled for a period of 4 and 5/7 weeks, claimant was entitled to temporary total disability at the rate of $18.00 per week and for permanent and complete loss of the use of his finger, 50% of his average weekly wage for forty weeks under the Act.

ECKERT, C. J.

On June 16, 1947, the claimant, Calvin Pippin, an employee of the respondent in the Department of Public Works and Buildings, Division of Highways, while operating a power mower on S.B.I. Route 49, in the City of Kankakee, Illinois, struck an obstruction which caused the safety catch to release and the cutter bar to swing back toward the tractor. Claimant got off the tractor, disengaged the cutter bar and swung it back to mowing position. While swinging the cutter bar forward, the sickle bar moved and severed his right index finger at the second joint,

Immediately afterward claimant was taken to St. Mary's Hospital, Kankakee, Illinois, where Dr. Charles Allison performed an amputation just below the middle joint.

During the first four weeks of disability, claimant was paid his full salary in the amount of $137.74. Thereafter he was paid compensation in the amount of $15.43. Respondent has paid for all medical and hospital services.

At the time of the accident claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of the employment. Claimant's earnings

during the year immediately preceding his injury totalled $1800.00. He had no children under sixteen years of age dependent upon him for support. Claimant seeks an award for the specific loss of the first finger of his right hand.

Claimant was temporarily totally disabled for a period of 4 and 5/7 weeks. Since his annual earnings were $1800.00, his compensation rate is the maximum of $15.00. The injury having been subsequent to July 1, 1945 this must be increased 20%, making his compensation rate $18.00 per week. Claimant mas, therefore entitled, on account of his temporary total disability, to the sum of $84.85. Since he received $153.17, the excess of $68.32 must be deducted from the award in this case.

Claimant having suffered the loss of more than one phalange of the first finger of his right hand, he is entitled to an award for the permanent and complete loss of the use of this finger, or 50% of his average weekly wage for forty weeks. This aggregates the sum of $720.00, from which must be deducted the overpayment of $68.32 leaving a balance of $651.68.

Frances Regnier, of Kankakee, Illinois, was employed to take and transcribe the evidence at the hearing before Commissioner Young. Charges in the amount of $15.75 were incurred for these services, which charges are fair, reasonable and customary.

An award is, therefore, entered in favor of Frances Regnier in the amount of $15.75, and an award is entered in favor of Calvin Pippin in the amount of $651.68, all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4075—Claimant awarded $118.73.)

THE TEXAS CO., A DELAWARE CORPORATION. Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1948.

PAUL F. SCHLICHER, Attorney for Claimant.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

SUPPLIES—*regularly purchased and received by various divisions of the Department of Public Works and Buildings allowed for at the price contracted, where the appropriation therefor had lapsed.* Where the claimant has furnished supplies, the purchase of which was duly authorized, submitted invoices therefor to respondent within a reasonable time and has not received payment, such non-payment is due to no fault on the part of, the claimant and where there remained a sufficient unexpended balance, from which payment could have been made, claimant is entitled to an award.

DAMRON, J.

During the period from January 27, 1947, to June 30, 1947, the Department of Public Works and Buildings of the State of Illinois, Division of Highways, purchased and received under purchase order No. **E-36337** various amounts of gasoline, motor oils, transmission, gear, and grease lubricants from the claimant, the Texas Company, a Delaware corporation. A total of forty-four invoices were presented to the various departments and divisions who purchased the various items, which amounted to $118.73.

It is stipulated by and between the parties hereto that the report of the Department of Public Works and Buildings, Division of Highways, dated April 30, 1948 shall constitute the record in this case.

The report admits that the allegations of the complaint are correct; that the gasoline, motor oil, transmission, gear, and grease lubricants were purchased by

and for the various divisions mentioned in said report; that the merchandise was received by the various departments and that all purchases shown in claimant's bill of particulars were made and delivered but not invoiced; that the gross value of the purchases is as represented by claimant; that verification has been made that the purchases were by various employees of departments and divisions; that the materials were for and used in the State owned equipment and that the quantities and prices were correct and otherwise in conformity with the purchase order and contract; that the appropriations were in existence and unexpended balance remained in them through September 30, **1947,** for the payments of claimant's invoices if they had been presented for payment before the last mentioned date at which time the appropriation lapsed.

We find from this record that claimant has furnished supplies for the respondent, the purchase of which was properly and duly authorized; claimant submitted its invoices to the respondent within a reasonable time and has not received payment; such non-payment is due to no fault on the part of the claimant; when the charges were incurred there remained a sufficient unexpected balance in the appropriation from which payment could have been made. Claimant is, therefore, entitled to an award.

The National Refining Co., *A Corporation,* vs. *State of Illinois,* **14 C.C.R. 127.**

An award is therefore entered in favor of the claimant in the sum of One Hundred Eighteen Dollars and Seventy-three Cents **($118.73).**

(No. 4080—Claimant awarded $4,888.87.)

SARAH S. KNOX, WIDOW OF HARRY KNOX, DECEASED, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1948.

MICHAEL C. ARTERY, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and HON. WILLIAM J. COLOHAN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*death of employee of Division of Highways resulting from being struck by automobile while loading tools after assisting and clearing highway of glass and debris—widow entitled to maximum allowance under the Act.* Where death of an employee of the Department of Public Works and Buildings, Division of Highways, resulted from being struck by an automobile while loading tools into maintenance truck, his widbw was entitled to maximum allowance under the Act after deducting **$311.13** received by the deceased before his death on account of temporary total disability. The award further ordered payable for the use of attending doctors, sums in the aggregate amount of **$2,315.00.**

ECKERT, C. J.

The decedent, Harry Knox, was employed by the respondent in the Department of Public Works and Buildings, Division of Highways, at the time of his death, and had been so employed since May 22, 1947. On the evening of August 24, 1947, after assisting in clearing U. S. Highway 20 and 12 near Oak Lawn, Illinois, of glass and debris caused by a previous accident, and while loading his tools into the maintenance truck, the decedent was struck by an automobile. He was immediately taken to the Little Company of Mary's Hospital at Evergreen Park, Illinois, where he remained until his death on December **23,** 1947.

At the time of the accident resulting in the death of Harry Knox, the employer and employee were operating under the provisions of the Workmen's Compensation

Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of decedent's employment. The claimant, Sarah S. Knox, as widow of Harry Knox, seeks an award in the sum of $5200.00 and medical expenses occasioned by the death of her husband.

The respondent has paid hospital and medical charges totalling $1,984.86. There remain unpaid, for medical services furnished to decedent, the following accounts:

Dr. Clifford P. Sullivan.....	$ 25.00
Dr. Chester R. Zeiss.....	540.00
Dr. Donald G. Sullivan.....	2,670.00

Dr. Donald G. Sullivan testified on his own behalf in considerable detail. He stated that he first saw the decedent in the emergency room at the hospital on August 25, 1947; that the patient was in a state of extremis; that he had a compound fracture of the left elbow, a severe cerebral concussion with cortical deterioration, a fractured pelvis, an extensive, comminuted fracture of the left tibia, a separation of the sacroiliac joint, fractures of the 5th right lumbar transverse vertebra and right ankle, multiple contusions and abrasions, and internal injuries, and that he was in a state of severe shock. Dr. Sullivan rendered five continuous hours of emergency treatment and first aid, including infusions of plasma, fluids and stimulants for which he charged $300.00.

Dr. Sullivan subsequently administered, or personally supervised, thirteen blood and plasma transfusions, for which he charged $325.00. He also gave, or supervised, sixty intravenous nutritional and saline infusions, for which he charged $900.00.

Dr. Sullivan further testified that he and Dr. Zeiss operated on the decedent's elbow, an operation which was attended with great risk because of patient's critical condition. For this operation he charged $150.00. On eleven occasions Dr. Sullivan cut away and cleansed pressure sores and decubitus ulcers, for which he charged $165.00. For three insertions of retention catheters he charged $45.00.

Dr. Sullivan also applied a Thomas splint to support decedent's leg with traction blocks, applied a Burdick constrictor to the right leg to increase the arterial supply, and on two occasions applied splints. For these services he charged $150.00.

Dr. Sullivan's charges also include $50.00 for time spent in examining X-rays; $25.00 for preparation of reports requested by respondent, and **140** hospital visits, for which he charged $560.00.

On cross-examination, Dr. Sullivan stated that he made separate charge for the four plasma and blood transfusions and one saline infusion administered during the first aid treatment, which charges were in addition to the $60.00 per hour he charged for that five hour period of service. Many of the intravenous infusions for which he made separate charge were given during the one hundred and forty hospital visits, but he stated that such visits were charged on the basis of physical examinations and minor dressings. The hospital Roentgenologist made X-ray reports, but the doctor said he deemed it advisable to look personally at the film rather than to accept the reports.

There is no question that Dr. Sullivan was required to give extensive and almost constant treatment and attention to a patient in an extremely critical condition. No question can be raised as to his professional ability

or devotion. Nevertheless, Dr. Sullivan's testimony that $2,670.00 is a fair and reasonable overall charge for the services he performed, carefully and impartially considered, and detailed as it is, is not persuasive. He denies there is any duplication of charges for various treatments, but the cross-examination is not entirely convincing. The court is of the opinion that $1,750.00 is a fair and reasonable compensation for the services which Dr. Sullivan performed.

The charge of Dr. Chester R. Zeiss in the amount of $540.00, including $200.00 for surgical reduction of the pubic separation; $150.00 for surgical reduction of the fracture of the left humerus; $100.00 for amputation of the leg, and $90.00 for thirty post-operative hospital visits. The court is of the opinion that these are fair and reasonable charges.

Likewise the charges of Dr. Clifford P. Sullivan in the amount of $25.00 appears entirely reasonable and fair.

At the time of his injury, decedent's wages were 90c per hour. Eight hours constituted a normal working day. Employees in the same classification as claimant worked less than 200 days a year. He had no children under sixteen years of age dependent upon him for support. For compensation purposes, claimant's earnings must be computed on the basis of $1440.00 per year, or $27.70 per week, making a compensation rate of $13.85. Since the injury occurred subsequent to July 1, 1947, this must be increased 30%, making a compensation rate of $18.00 per week.

Under the provisions of the Workmen's Compensation Act, claimant is entitled to an award in the total sum of $5200.00. The decedent, however, prior to his death, received the sum of $311.13 on account of temporary total

disability. This must be deducted from the award to his widow.

A. M. Rothbart, Reporter, was employed to take and transcribe the evidence at the hearing before Commissioner Blumenthal. Charges in the amount of $74.95 were incurred for these services, which charges are fair, reasonable and customary.

An award is therefore made to claimant as follows:

$74.95 is payable forthwith for the use of **A. M.** Rothbart, Reporter.

$1,750.00 is payable forthwith for the use of Dr. Donald ***G.*** Sullivan.

$540.00 is payable forthwith for the use **of** Dr. Chester R. Zeiss.

$25.00 is payable forthwith for the use of Dr. Clifford P. Sullivan.

$5,200.00 less $311.13, or $4,888.87 is payable to claimant as follows: $828.00, which has accrued, is payable forthwith. The balance of **$4,060.87** is payable in weekly installments of **$18.00** per week, beginning on the 9th day of November, 1948, for a period of 225 weeks with an additional final payment of **$10.87.**

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 4082—Claimant awarded $572.84.)

VERN **A.** LANDIS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1948.

CHARLES G. SEIDEL, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and WILLIAM **J.** COLOHAN, Assistant Attorney General, for Respondent.

WORKMEN'S **COMPENSATION** ACT—*step in ladder breaking, causing fracture, entitled to award under.* Where an employee of Elgin State Hospital sustains fracture of heel bone and impaction and flattening of the Boehler angle caused by falling from ladder, due to step giving way, and in consequence thereof suffered pain when walking or climbing and limitation in motion. Held that he was entitled to 33⅓% permanent partial loss of the use of his right foot under the Act.

BERGSTROM, J.

Claimant, Vern A. Landis, filed his claim on April **13,** 1948 for compensation under the Workmen's Compensation Act for injuries he sustained on April 14, 1947 during the course of his employment as a tinner by the Department of Public Welfare, at the Elgin State Hospital.

No jurisdictional questions are presented by the record, and it is admitted by stipulation, that claimant sustained an injury by reason of an accident which arose out of and in the course of his employment on April **14, 1947.**

From the evidence, it appears that claimant was removing from an outside, overhead sign at the laundry building, and while engaged in this task the step of a ladder on which he was standing gave way and he fell down, striking the pavement. He was given immediate attention by Dr. Charles K. Bush, Jr. at the general hospital and was removed later the same day to the Sherman Hospital at Elgin. He was hospitalized until May 13th. His leg was placed in traction and he remained at home using crutches and later a cane. He returned to work June 7th. Prior to the accident he was in perfect health, but since then he feels as though he is walking with a pebble in his shoe; his ankle bothers him, and he has more or less constant dull pain. His leg swells if he makes a misstep. Occasionally he has an acute pain. He cannot

run, raise up, climb as well as he did before, or holtl his weight on the foot.

Dr. Charles K. Bush, Jr., physician at the Elgin State Hospital, treated claimant on the day of the accident. X-ray revealed a fracture of the heel bone of the right foot with considerable impaction and flattening of the Boehler angle. Dr. Paul Tobin, tlie orthopedic consultant, recommended that claimant be taken to a private hospital where he could receive the benefit of orthopedic care and traction. Dr. Bush, on the basis of an examination on the day of the hearing, testified there was an increase in the width of the heel and limitation in eyersion and inversion. Later X-rays all show complete healing, but the fragments of the foot are out of proper alignment. Pain on walking or climbing is to be expected and also limitation of motion. The disability is probably permanent. In his opinion, claimant would not have tlie ability he previously had in climbing ladders and involving the use of his foot will probably tire it out quicker than normal.

From the evidence, and personal observation of claimant, Commissioner Blumenthal recommended an award based on 33-1/3% permanent partial loss of the use of claimant's right foot. The Court concurs in this recommendation.

Claimant was forty-nine years old and had no children under sixteen years of age. Medical and hospital expenses aggregating $542.00 mere paid by respondent. His earnings for the year preceding his accident were on the basis of $304.50 per month. His compensation rate therefore, would be $15.00 per week, increased by 20%, or to $18.00 per week, the accident having occurred after July 1, 1945 and before July 1, 1947.

The period of claimant's temporary total incapacity

was from April 14th to June 7th, 1947, and he was entitled to receive compensation from April 15th to June 7th, 1947, a period of seven weeks and four days, at the rate of $18.00 per week, or a sum of $136.29. For this period he was paid the sum of $373.45 for unproductive time, which represents an overpayment of $237.16.

Claimant is entitled to an award based on 33-1/3% permanent partial loss of the use of his right foot, which would be computed on the basis of 45 weeks, at $18.00 per week, or $810.00, from which must be deducted the overpayment of $237.16.

Claimant, Vern A. Landis, is, therefore, awarded $572.84, all of which has accrued and is payable forth-, with.

A. M. Rothbart, Court Reporter, 120 South LaSalle Street, Chicago, Illinois, took and transcribed the testimony in this case, and the invoice which he submitted for this work of $36.50 we find to be fair, reasonable and customary. An award is also made to A. M. Rothbart in the sum of $36.50.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. **4085—Claim denied.**)

SOPHIA TIEMAN, ET AL., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1948.

CHARLES E. BINKERT, Attorney for Claimant.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

VACATION, NOT TAKEN—*right to compensataon for after termination of employnzent.* Where an employee, resident dentist at the Illinois Soldiers' and Sailors' Home, of the State was paid in full for all his service up to and prior to his death and received and cashed his pay warrants for such services, such warrants constitute full payment for all services rendered, and no additional payments can be made for such services.

SAME. Additional payments for, are prohibited by Article IV, Section 19, of the Constitution of Illinois.

SAME. The Civil Administrative Code providing for annual leave does not make it mandatory that a leave shall be taken, but merely provides a right which an employee may exercise or not at his discretion. This right is extinguished when the employment ceases by death or otherwise.

BERGSTROM, J.

Sophia Tieman filed her complaint in this cause as the executor of the last will and testament of Leon W. Tieman, deceased.

It is alleged that at the time of his death on December 3, 1947, and prior thereto, Dr. Tieman was employed as a resident dentist at the Illinois Soldiers' and Sailors' Home, Quincy, Illinois. It is further alleged that at the time of his death Dr. Tieman had earned and was entitled to twelve days vacation pay at the rate of $365.00 per month, less maintenance, or the sum of $121.94.

The claimant further states that she presented her claim, as executor, to the superintendent of the Illinois Soldiers' and Sailors' Home, but that her claim was denied. She further says that, as the executor of the estate of Leon W. Tieman, she is entitled to the aforesaid sum of $121.94 for services rendered by the said Leon W. Tieman.

This now comes before the Court on a motion to dismiss of respondent, by the Attorney General.

Claimant undoubtedly bases her claim on Paragraph 22, Chapter 127, of the Illinois Revised Statutes, 1947, which says: ''Each employee in the several departments

shall be entitled during each calendar year to fourteen days leave of absence with full pay. * * * * *"

We assume from the record, that the decedent, Dr. Tieman, was paid in full for all his service rendered up to, and prior to, his death, and received his pay warrants for such services. This Court has repeatedly held that where warrants are drawn and cashed for personal services rendered to the State of Illinois, the same constitutes full payment for all services rendered between the dates specified, and no additional payments for such services can be made. *Mills* v. *State,* 9 C.C.R. 69; *Gholson* v. *State,* 12 C.C.R. 26; *Klapman* v. *State,* 13 C.C.R. 139; *Angsten* v. *State,* 13 C.C.R. *8; Hollender* v. *State,* **14** C.C.R. 40; *Willms* v. *State,* 14 C.C.R. 46; *Shields, et al.* v. *State,* 14 C.C.R. 136. In so holding, we have followed the clear intent of Article IV, Section 19, of the Constitution of Illinois, 1870, which reads :

"The General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim, or part thereof, hereafter created against the State under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void; *Provided,* the General Assembly may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion."

Paragraph 145, Subsection **3,** of Chapter 127 of the Illinois Revised Statutes 1947, reads :

"(3) Amounts paid from appropriations for personal services of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates specified in the payroll or other voucher and no additional sum shall be paid to such officer or employee from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances on specific appropriations, which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made."

The theory behind claimant's claim, apparently, is that decedent had rendered services to the State and was entitled to this vacation and, not having taken it, should be compensated instead. To this we cannot agree. If he was paid in full for the time he was employed and then paid again for part of this time, it would be in the nature of additional salary or wages expressly prohibited by the Constitution and by Subsection 3, Paragraph 145, *supra.*

The Civil Administrative Code, in providing for annual leave, does not make it mandatory that such leave shall be taken, but merely provides a right which an employee may exercise or not at his discretion. This right or privilege is extinguished when his employment ceases by death or otherwise. Similar claims were denied by this Court in the case of *Lewis* v. *State,* 10 C.C.R. 136; *Tripp* v. *State,* 10 C.C.R. 137; and *Emling* v. *State,* 10 C.C.R. 196, where the Court said, on page 198:

> "Conceding for the moment, that the commission had authority to give vacations with pay, under authority of the foregoing statute and rule, claimant would still not be entitled to double pay for any portion of time for which she was actually in service, or entitled to any additional pay after her services to the State were terminated, even though she had failed to obtain a vacation which she might have requested."

For the reasons stated, the motion of the Attorney General to dismiss, is granted, and the claim is hereby dismissed.

(No. 4089—Claimant awarded $310.40.)

CITY OF O'FALLON, ST. CLAIR COUNTY, ILLINOIS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1948.

Claimant, Pro Se.

HON. GEORGE F. BARRETT, Attorney General, and HON. C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WATER SUPPLIES—*not paid for prior to lapse of current appropriations, allowed.* Where the City of O'Fallon supplied water service to a building maintained by the Department of Public Safety, and through oversight the charges were not paid prior to the lapse of the current appropriations, and the charges were undisputed and sufficient remained unexpended in the appropriations to pay the claim, an award will be made.

ECKERT, C. J.

The respondent, through its Department of Public Safety maintains a building at 9300 Saint Clair Avenue, East St. Louis, Illinois. Water service for this property is furnished by the City of O'Fallon, and is paid for by the respondent on the same terms as that of a private consumer. Ordinarily bills are paid quarterly.

Through oversight the charges for the period of November 1, 1945 to June 30, 1947, were not paid prior to the lapse of the current appropriations. It is uncontradicted that the water was furnished to the respondent by the claimant in the quantities shown in claimant's statement. The charges are in accord with standard rates and aggregate the sum of $310.40. Sufficient funds remained unexpended in the appropriations to pay the claim in full.

An award is therefore entered in favor of claimant in the amount of three hundred ten and 40/100 dollars ($310.40).

(No. 4090—Claimant awarded **$1,326.00.)**

HATTIE HOBBS, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1948.

ROY A. PTACIN, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, for Respondent; WILLIAM L. MORGAN, Assistant Attorney General, of Counsel.

WORKMEN'S COMPENSATION ACT—*when award for compensation may be made.* Where an employee of the Department of Public Welfare, Division of Hospitals, sustains injuries due to falling down steps of institution, an award for compensation therefor may be made in accordance with the provisions of the Act, upon compliance by the employed with the terms thereof.

DAMRON, J.

Hattie Hobbs, claimant filed this complaint on May 14, 1948 for an award under the Workmen's Compensation **Act.** No jurisdictional questions are presented.

It was stipulated before the Commissioner on the basis of the Departmental Report as follows:

Claimant had been in the employ of respondent, Department of Public Welfare, Division of Hospitals in the capacity of institutional worker from June 24, 1947 to January 15,1948. Her salary was $140.00 per month. On the last mentioned date she was injured by reason of an accident arising out of and in the course of her employment.

The only question to be determined is as to the extent of her disabilities and the amount, if any, to which she is entitled by reason thereof.

The record discloses that about 10:30 A. M. on January 15, 1948 while on her way to report for duty at the general dining room of the 'Chicago State Hospital, claimant fell down the steps of the employee's building in which she resided. She was taken immediately to the

employee's hospital where Dr. Louis Olsman the staff surgeon and employee's physician administered treatment and placed her right arm in a cast. The cast was retained for about six weeks. Before the accident her right' arm was in a good condition; but since then she can not hold heavy objects; cannot sweep; cannot flex it and her arm pains her from the wrist to the elbow. Claimant returned to work on March **3,** 1948 and since then has received a $5.00 salary increase.

Dr. Albert C. Field a witness for claimant testified that at the time of the hearing there remained a 25 degree limitation of extension in claimant's hand; between 60 and 65 degrees limitation of flexion; 25 degree limitation of supination and in closing the palm the finger tips reached only within ½ inch of the metacarpophalangeal joint. There was a shortening of the radius with some deformity at the lower end of the ulna. In his opinion claimant had suffered between 40 and 50 degrees of the permanent partial loss of use of her right hand.

Dr. Louis Olsman, staff surgeon, at the Chicago State Hospital called **a** witness by respondent described claimant's injury as **a** comminuted Colles fracture. He interpreted an X-ray taken **a** few days prior to the hearing as revealing a good union of the bone fragments with **a** widening of the distal end of the radius and with some posterior angulation of the radial angle. In his opinion claimant had sustained approximately 35 to 40 per cent loss of use of the right hand as the result of the Colles fracture.

After full consideration of this record, the Court finds that the claimant and respondent were, on the 15th day of January, 1948, operating under the provisions of the Workmen's Compensation Act; that on the date last above mentioned said claimant sustained accidental in-

juries which arose out of and in the course of her employment; that notice of said accident was given the respondent and claim for compensation on account thereof was made on said respondent within the time required under the provisions of said Act. That the annual earnings of claimant next preceding the injury were $1680.00 and the average weekly wage was $32.30, and claimant had no children under sixteen years of age.

The Court finds that claimant suffered a 40 per cent permanent partial loss of use of her right hand due to said injury for which she is entitled to an award, therefore she is entitled to have and receive from the respondent the sum of $19.50 for a period of 68 weeks, amounting to the sum of One Thousand Three Hundred Twenty-six Dollars ($1,326.00). Of this amount the sum of Eight Hundred and Nineteen Dollars ($819.00) has accrued as of November 5th, 1948, and is payable forthwith; the balance of said award, amounting to Five Hundred and Seven Dollars ($507.00) is payable to her at $19.50 per week in weekly installments.

The evidence discloses that A. M. Rothbart was employed to take and transcribe the evidence at the hearing before the Commissioner. For said services he made a charge of $34.85, which me find is fair, reasonable, and customary.

An award is therefore entered in favor of A. M. Rothbart, Court Reporter, in the sum of $34.85.

These awards are subject to the approval of the Governor as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 4091—Claimant awarded **$5,785.00.)**

BERTHA MILLIE WEAVER, WIDOW, ET AL., Claimant, *vs.* STATE OF ILLINOIS, Res'pondent.

Opinion filed November 9, 1948.

JOSEPH M. WILLIAMSON, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* award *for compensation will* be made under. Where employee is killed arising out of and in the course of his employment, an award for compensation therefor may be made in accordance with provisions of the Act, upon compliance with the terms thereof.

SUBROGATION—*as against* third *parties.* Where the injury is caused **by** the negligence of a third party, the State under Section 29 of the Act has the right by subrogation to recover any amounts paid or payable under this claim.

BERGSTROM, J.

Claimant, Bertha Millie Weaver, filed her claim on July 24, 1948 for compensation under) the provisions of the Workmen's Compensation Act as the widow of Lee C. Weaver, who suffered a fatal accidental injury on May 28, 1948 while employed by the respondent in the Department of Public Works and Buildings, Division of Highways. Decedent also left surviving him one son, Eugene F. Weaver, who was born on September 27,1934.

The record consists of the Complaint, Report of the Division of Highways, Stipulation, Waiver of Brief and Argument by respondent and by claimant.

On May 28, 1948 decedent and his helper, Mr. Gaylord J. Weatherald, were cutting vegetation on Route U. S. 45, north of Urbana. Shortly before 4:00 P. M. that afternoon the tools were loaded into the truck and the two men started to the Division storage shed at Urbana. At approximately 3:50 P. M., while proceeding in a south-

erly direction on Route U. S. 45, approximately 1½ miles north of Urbana, Champaign County, a White semi-trailer truck owned by Hartung and Burmeister, Foley, Alabama, and driven by Thomas S. Hedge, Ozena, Florida, overtook the Division truck from the north. Although U. S. 45 at this point is a four-lane 40 foot highway, Mr. Hedge failed to swing out far enough to clear the Division truck. The right front fender of the White truck grazed the left rear of the Division truck, and then the right front corner of the trailer struck the left rear of the Division truck, shearing the dump body off the chassis and catapulting the truck 70 feet in a southwesterly direction into an adjoining field.

The sheared dump body pushed the Division truck cab forward crushing Mr. Weaver between the cab and the steering wheel. He suffered internal chest and abdominal injuries' accompanied by internal hemorrhaging, multiple abrasions and lacerations, and a fracture of the skull. He was taken by ambulance to the Burnham City Hospital, Urbana, where Dr. Earl D. Wise was placed in charge of the case. Mr. Weaver died at 7:30 that same evening.

There is no jurisdictional question presented by the record, and we find from the evidence that Mr. Weaver died from an accidental injury which he sustained from an accident arising out of and during the course of his employment by respondent. However, from the evidence, it appears that the accident was caused by the negligence of a third party, and under Section 29 of the Workmen's Compensation Act, respondent has a right by subrogation to recover any amounts paid or payable under this claim.

Decedent's earnings from respondent for the year 'preceding his death total $2225.16. He left a widow, and one child under sixteen years of age surviving him.

Claimant is, therefore, entitled to an award under Paragraphs A and **H-3** of Section 7 of the Act, in the sum of **$4450.00,** increased by 30% under paragraph L, or a total sum of $5785.00, payable at the rate of **$19.50** per week.

In connection with this injury respondent paid $50.00 for medical, hospital and ambulance service.

An award is therefore made to claimant, Bertha Millie Weaver, in the sum of $5785.00, payable as follows:

$ 468.00 which has accrued, is payable forthwith;
$5,317.00 is payable in weekly installments **of** $19.50, commencing November 19, 1948 for **272** weeks, with a final payment of $13.00.

Jurisdiction is hereby specifically reserved in this cause for the entry of such further order or orders as may from time to time be necessary.

This award is subject to the approval of the Governor, as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 4110—Claimant awarded $3,805.55.)

ALONZO D. WISE, Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion filed November 9, 1948.

R. B. **THOMAS,** Attorney for Claimant.

How. GEORGE F. BARRETT, Attorney General, **for Respondent** ; C. **ARTHUR** NEBEL, Assistant Attorney General, of Counsel.

WORKMEN'S COMPENSATION *ACT—when award for compensation under Act may be made.* Where an employee attending patients of the East Moline State Hospital was attacked by a patient, fell and was injured in consequence thereof, an award for compensation therefor may be made in accordance with the provisions of the Act.

DAMRON, J.

Claimant, Alonzo **D.** Wise, filed his complaint on July 26, **1948,** for an award for permanent and total dis-

ability under the Illinois Workmen's Compensation Act. The record shows that claimant's injuries resulted from an accident arising out of and in the course of his employment as an attendant by respondent in the Department of Public Welfare; that notice thereof and claim for compensation was made within the statutory period, as required under Section 24 of the Act.

On the afternoon of December 5, 1947, while claimant was attending patients in Ward 2 of the East Moline State Hospital he was attacked by a patient. He struck the end of a table and fell to the floor. Claimant was then eighty-three years of age.

Dr. Armin H. Wolff, assistant superintendent, arrived at the ward within a few minutes and made an examination of Mr. Wise, which revealed pain in the region of the right hip and shortening and eversion of the right leg indicative of possible fracture. Claimant was taken on a stretcher to the hospital ward. An X-ray taken on the same date was interpreted by Dr. Wolff as reveding a fracture of the neck of the femur with impaction. Later X-rays showed slight callus formation but otherwise essentially the same condition. The witness further testified that prior to the accident claimant worked constantly and performed his duties in a satisfactory manner; he attended claimant since the accident and knows claimant is unable to walk without assistance, that he must use crutches, has limited motion in the right hip and shortening in the right leg. In his opinion claimant is unable to perform the duties assigned to him prior to December 5, 1947; his condition is due to the fracture; his present disabilities are permanent and claimant will be unable to walk sufficiently in the future to be gainfully employed.

Dr. P. S. Waters, superintendent of the hospital, tes-

tified claimant prior to the accident was considered a "number one" attendant; that he has studied the X-rays; has observed Wise since December 5, 1947 and his findings would substantially concur with the testimony of Dr. Wolff.

Claimant testified in his own behalf that prior to the accident he had no difficulty in performing his duties, could go up two steps at a time and worked regularly eight hours a day six days a week. At present he has a short leg, cannot dress himself or stoop, and requires someone else to put him in bed and get him out of bed. He has been in a wheel chair and cannot leave it without assistance. He can bear some weight since he has been walking on crutches, but when he gets up his knee gives out.

It was stipulated that hospital and medical services were provided by respondent to the date of the hearing.

The testimony of claimant, Dr. Wolff and Dr. Waters clearly establishes that claimant at present has wholly lost the normal use or function of his leg and that this incapacity in their opinion is permanent. The evidence further discloses that the injury is confined to claimant's leg, but that as a result of claimant's condition he will be unable to engage in gainful employment.

On the basis of this evidence claimant contends that he is entitled to an award for permanent and total disability and pension, rather than an award for specific loss of the leg. Claimant's counsel cites *Chicago Journal* Co. vs. *Industrial Commission,* **303** Ill. **443,** as sustaining this position. He also argues that the exception in the specific loss schedule of the first provision of Clause 18, Par. (e), Sec. 8 of the Workmen's Compensation Act shows the legislature intended that an employee is entitled to an award for total disability in every case where .

an injury renders the employee wholly and permanently incapacitated for work.

The Attorney General contends that the case of *Penninger* v. *Xtate,* 16 C.C.R. 111, is controlling. The facts in that case were substantially identical with those in the instant case, and it was held that claimant was not entitled to an award for total and permanent disability but had sustained a specific loss only for which she was entitled to compensation.

The *Chicago Journal Company* and *Heap* cases relied upon by claimant do not directly pass upon the precise question presented in the instant case.

The evidence in this record discloses that claimant's injuries and disabilities are limited to his leg. Except for this loss of use of his leg there is no evidence to indicate that other organs or members of claimant's body were in any way affected as a result of the injury. Except for the specific injury claimant is otherwise normal for a man of his advanced years.

We do not believe this record sanctions an award for total and permanent disability. We do find that claimant has sustained a permanent and complete loss of use of his 'right leg.

Claimant was temporarily and totally disabled from December 5, 1947 to October 8, 1948, a period of forty-four weeks. His annual earnings were $1,827.58. His weekly compensation rate is, therefore, $19.50.

We find that claimant was entitled to the sum of $858.00 for forty-four weeks of temporary total disability, for which he was paid the sum of $757.45. He is, therefore, entitled to the further sum of $100.55 for temporary total incapacity.

We further find that claimant has suffered a permanent and complete loss of use of his right leg for

which he is entitled to an award for 190 weeks at $19.50 per week.

An award is, therefore, hereby entered in favor of claimant, Alonzo D. Wise, in the sum of three thousand, seven hundred and five dollars ($3,705.00), plus one hundred dollars and fifty-five cents ($100.55), amount due claimant for temporary compensation, or a total award of three thousand, eight hundred and five dollars and fifty-five cents ($3,805.55). Of this amount the sum of one hundred dollars and fifty-five cents, balance due for temporary compensation, is payable forthwith; as is the further sum of ninety-seven dollars and fifty cents ($97.50), representing accrued compensation for loss of use of leg, to November 12, 1948; or the total sum of one hundred and ninety-eight dollars and five cents ($198.05). The balance of the award in the amount of three thousand, six hundred and seven dollars and fifty cents ($3,607.50) is payable in weekly installments of nineteen dollars and fifty cents ($19.50) beginning November 19, 1948.

Arno N. Bufe was employed to take and transcribe the evidence in this case, and has made a charge for that service in the amount of forty dollars and eighty-five cents ($40.85). We find the charges fair, reasonable and customary. An award is, therefore, hereby entered in favor of Arno N. Bufe in the sum of forty dollars and eighty-five cents ($40.85).

These awards are subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees".

(No. 3984—Previous award modified.)

RUBY BAKER, WIDOW OF FREDERICK C. BAKER, DECEASED, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

***Opinion** filed December 9, 1948.*

PAUL F. JONES, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and HON. C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*previous award modified upon dependent child reaching age of 18 years.* Where a dependent child reaches the age of 18, a previous award partially based upon the dependency of child will be modified so as to discontinue allowance for such dependent child.

ECKERT, C. J.

On April 24, 1947, an award was entered in this case in favor of the claimant in the amount of $5,340.00 *(Baker* vs. *State,* 16 C.C.R. 251.) At the time of the death of claimant's husband, a daughter, Ruth Ann Baker, then fifteen years old, was dependent upon him for support. Because of the dependency of this child, claimant's award was increased from $4,800.00 to $5,340.00.

On December 6, 1948, respondent filed herein its petition to modify the award heretofore entered, in accordance with the provision of Section 7 (a) of the Workmen's Compensation Act, Ruth Ann Baker having reached the age of eighteen years on December 1, 1948. Under that provision of the Act the death benefits, to the extent they were increased because of the existence of the child, insofar as they have not been paid, are extinguished when the child arrives at the age of eighteen years.

Of the original award of $5,340.00, $2,322.00 was paid to claimant prior to December 1, 1948, leaving a balance of $3,018.00 unpaid. This balance is .5651% of

the original award. Since the sum of $540.00 represents the increase of claimant's award for the dependency of her daughter, .5651% of $540.00, or $305.15, must now be deducted from the balance of the original award remaining unpaid.

The previous award is therefore modified accordingly, and the balance now due claimant, being the sum of $2,712.85, is hereby ordered paid to her in weekly installments of $18.00 per week, beginning as of December 2, 1948, for a period of 150 weeks, with an additional final payment of $12.85.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this Court is specifically reserved for the entry of such future orders as may from time to time be necessary.

(No. 4072—Claimant awarded $5,323.30.)

CLARA WELCH, WIDOW OF EZRA WELCH, DECEASED, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 9, *1948.*

LAWRENCE B. MOORE, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and HON. C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—when award for *compensation* may *be* made. Where an employee of the State Division **of** Highways was called upon to move heavier equipment and supplies than that usually required by his duties, and in consequence suffered a coronary block from which he died one week later, held that such injury was within the scope **of** his employment and accidental under the meaning of the Act and his estate was entitled to recovery under the Act.

"ACCIDENT"—"ACCIDENTAL INJURY"—*defined.* "Accident" and "accidental injury" as used in the Act have been defined to mean an injury that happens without design, and which is unforeseen and not expected

by the person to whom it happens. Held in this case that the employee was so disabled, unexpectedly, and in the course of his employment, without action or design on his part.

ECKERT, C. J.

On July 7, 1947, Ezra Welch, an employee of the respondent in the Department of Public Works and Buildings, Division of Highways, was engaged in moving machinery and equipment from the old State highway garage and warehouse to the new State highway garage and warehouse at Paris, Illinois. While resting during his lunch hour, at approximately 12:30 P.M., he suffered a coronary block. Mr. Welch was taken home immediately, where he was placed in the care of Dr. Francis M. Link. Mr. Welch was subsequently moved to the Paris Hospital, where he remained until July 14, when he returned home. He died the following morning.

At the time Ezra Welch suffered the coronary block which resulted in his death, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act.

The deceased was first employed by the Division of Highways on May 1, 1941. His earnings during the year immediately preceding his death aggregated $2,043.84. He had no children under 16 years of age dependent upon him for support. The claimant has incurred, on account of the illness and death of Ezra Welch, medical and hospital expenses in the amount of $123.30. She seeks an award in this amount, together with death benefits under the Illinois Compensation Act in the amount of $5,200.00.

From the testimony taken before Commissioner Jenkins, it is clear that decedent's usual work for the

division, prior to the summer of 1947, being the erection and maintenance of highway signs, was comparatively light in nature. Decedent was then in excellent health. In the latter part of June, 1947, however, he was called in from his usual work to assist in moving the sign department at Paris, Illinois, from the old to the new warehouse. The two warehouses were about a quarter of a mile apart, and the move was made by truck and by a sled used for the heavier equipment which included, among other things, a buffing machine, weighing over one thousand pounds, a metal vat, kegs of nuts and bolts, drums of paint, large signs, a paint spray booth, and fan and motor. The morning decedent suffered the heart attack, he had been lifting paint drums, kegs of bolts, and heavy metal signs from a truck, handing them up to another employee in the upstairs loft of the new warehouse. From the medical testimony, it is clear that the coronary **block,** which caused decedent's death, was the direct result of this heavy lifting.

The Court is of the opinion that the death of Ezra Welch, husband of claimant, was due to an accidental injury which arose out of and in the course of decedent's employment, within the meaning of the Illinois Workmen's Compensation Act. The words "accident" and "accidental injury," as used in the Act, have been defined to mean an injury that happens without design and which is unforeseen and not expected by the person to whom it happens. (*Fittro* vs. *Industrial Commission,* 377 Illinois *532,* 538; *Marsh* vs. *Industrial Commission, 386* Illinois **11;** *Schierbaum* vs. *State,* 14 C.C.R. 250.) This employee was so disabled, unexpectedly, and in the course of his employment, without any action or design upon his part.

The decedent's earnings during the year immedi-

ately preceding his death being in excess of $2,000.00, claimant is entitled to the maximum award of $4,000.00. Since the death occurred subsequent to July 1, 1947, this must be increased 30%, making a total of $5,200.00. The compensation rate is the maximum of $15.00 per week, increased 30%, or $19.50. Claimant is also entitled to be reimbursed on account of medical and hospital expenditures made by her in the amount of $123.30.

The testimony taken at the hearing before Commissioner Jenkins was taken and transcribed by Helen Bell of Charleston, Illinois, who made charges therefor in the amount of $67.80. These charges appear reasonable and proper.

An award is therefor entered in favor of Helen Bell in the amount of $67.80, payable forthwith.

An award is entered in favor of the claimant, Clara Welch, in the amount of **$5,323.30,** to be paid to her as follows:

$ 123.30, reimbursement for medical and hospital expenses, is payable forthwith;
1,423.50, accrued, is payable forthwith;
3,776.50, is payable in weekly installments of $19.50 per week, beginning on the 15th day of December, 1948, for a period of 193 weeks, with an additional final payment of $13.00.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4076—Claimant awarded $180.40.)

TIDE WATER ASSOCIATED OIL COMPANY, Claimant. *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 9, 1948.

Claimant, Pro Se.

HON. GEORGE F. BARRETT, Attorney General, for Respondent.

SUPPLIES—*regularly purchased and received by Division of Highways allowed for at price contracted where appropriation therefor had lapsed.* Where the claimant has furnished oil duly purchased by the Department of Public Works and Buildings, Division of Highways, and submitted invoices therefor within a reasonable time, the appropriation for these supplies having lapsed before the clearing of the invoices by the Department, and without fault of the claimant, an award for the reasonable value of the supplies will be made if at the time the expenses were incurred there were sufficient funds to pay the same remaining in the appropriation.

ECKERT, C. J.

Respondent, through its Department of Public Works and Buildings, Division of Highways, made duly authorized purchases of four drums of lubricating oil from the claimant on June 30, 1947, at a cost of $180.40. The appropriation for the payment of these supplies lapsed before the invoices were cleared by the division. The invoices, however, were submitted within a reasonable time, and non-payment is without fault on the part of the claimant. Sufficient funds remained unexpended in the appropriations to pay for the same.

This Court has repeatedly held that where materials or supplies have been properly furnished to the State, and an invoice therefor has been submitted within a reasonable time, but the same was not approved and vouchered for payment before the lapse of the appropriation from which it is payable, an award for the reasonable value of the supplies will be made if, at the time

the expenses were incurred, there were sufficient funds remaining unexpended in the appropriation to pay for the same. (*Johnson* vs. *State,* 16 C.C.R. 96). This case clearly comes within the rule.

An award is therefore entered in favor of the Tide Water Associated Oil Company, claimant, in the amount of $180.40.

(No. 4086—Claimant awarded $138.36.)

SOUTHERN COAL CO., INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 9, 1948.

J. L. TUCKER OF SOUTHERN COAL CO., INC., Pro Se.

HON. GEORGE F. BARRETT, Attorney General, and ARCHIE L. BERNSTEIN, Assistant Attorney General, for Respondent.

CONTRACTS—*when undercharge in railroad rates will be allowed.* Where railroad rates are increased, by order of Interstate Commerce Commission, over rates agreed to be paid for coal by the State under contract, held that the contract contemplated payment for coal delivered thereunder at certain stated prices plus the amount of the applicable freight rate as it might be amended from time to time by the Interstate Commerce Commission.

LAPSE OF APPROPRIATION—*when award should be made after.* Where the claimant has rendered service or delivered materials in accordance with an authorized contract, and the fact that there was undercharge was not ascertained until two years after the delivery and until after the two year appropriation period had expired, an award should be made provided there remained sufficient unexpended funds in the appropriation to pay the charge at the time it was made.

BERGSTROM, J.

On August 24, 1945, the Southern Coal Company, Inc., claimant, and the State of Illinois, respondent, entered into a written agreement whereby claimant agreed to furnish quantities of coal, totalling an estimated 8,750 tons, to respondent for use of Kankakee, Dixon, East

Moline, Elgin, and Manteno State Hospitals, Pontiac Penitentiary, State Farm at Kankakee, Dixon, East Moline, Manteno, Pontiac, and Vandalia, Illinois. It was agreed that respondent pay claimant a certain price F.O.B. mine, per ton of coal plus a stated freight rate, if delivered.

The sole question existing under this agreement, otherwise fully performed, relates to claimant's claim for $138.36 for freight undercharges with respect to a part of the 1,000 tons of coal allocated under the agreement and shipped to claimant between July 25 and September 30, 1946, to the Dixon State Hospital. This sum, paid by the claimant, represents an unknown increase of freight rate over the amount of the freight rate set forth in the original contract as the same was orally amended.

It is not contested that at the time the contract was executed it was contemplated the 1,000 tons of coal allocated to the Dixon State Hospital would be furnished by claimant from a mine at Pana, Illinois. However, due to a subsequent interruption in the operation of this mine, an understanding was reached between the parties that the balance of the coal be shipped from a mine at Coulterville, Illinois. Accordingly, further oral agreement was reached between the parties that the freight rates under the contract be adjusted from $1.70 per ton (Pana) to $1.90 and $1.98 per ton (Coulterville) to allow for the change in distance of shipment. The new freight rates so agreed to were the only rates then known to the claimant and respondent, as well as the railroad on whose line the coal originated. Meanwhile, an unknown increase of freight rate had occurred—Ex Parte 148 increases allowed in Illinois intrastate rates, effective July 21, 1946. The undercharge due *to* the

unknown increased freight rate of the Coulterville shipments was later brought to the attention of the railroad. The railroad, bound by law to collect the undercharge by the regulations of the Interstate Commerce Commission, then issued the undercharge bills to the claimant early in 1948. The freight undercharges were paid by the claimant in the total amount of $138.36.

The arrangement between respondent and claimant was to adjust their contract to freight rates existing at time of shipment. This is substantiated by the change of freight rates upon the necessity of obtaining the coal in question from Coulterville instead of Pana, Illinois. Claimant contends, and respondent does not deny, that freight rates provided for in contracts, as in the case at hand, are quoted as a matter of information; that such prevailing practice is customary because of the uncertainty of quoting exact freight rates months ahead; that at 110 time, in the previous experience of claimant had the State ever refused, or failed, to amend a similar contract because of increase of freight rates for supplies furnished; that, however, the present undercharges have not been paid by respondent because they were unknown until after the applicable two year appropriation period had expired.

From the record, we are of the opinion that the contract in question contemplated payment for coal delivered thereunder at certain stated prices plus the amount of the applicable freight rate as it might be amended from time to time by the Interstate Commerce Commission. There is no question that the claim is a just one, and the material facts are admitted. The sole reason for non-payment is that the undercharges were incurred in a previous biennium appropriation.

This Court has repeatedly held that an award should

be made where claimant has rendered service or delivered materials to the State in accordance with an authorized contract, has submitted a statement of costs and charges to the State within a reasonable time and was denied payment because of the lapse of the appropriation from which it was payable, provided there remained sufficient unexpended funds in the appropriation to pay the charge at the time it was made. *Moline Consumers* Co. v. *State,* 15 C.C.R. 100; *Illinois Bell Telephone* Co. v. *State,* 15 C.C.R. 115; *Johnson* v. *State,* 16 C.C.R. 96, and *Shell Oil Co., Inc.,* v. *State,* 16 C.C.R. 257.

An award is therefore entered in favor of claimant, Southern Coal Co., Inc., for the sum of $138.36.

(No. 4088—Claimant awarded **$329.70.)**

GEORGE WALDEN, Claimant, *vs.* **STATE** OF **ILLINOIS,** Respondent.

*Opinion **filed** December **9,** 1948.*

OLIVER **A.** BURKHART, Attorney for Claimant.

HON. GEORGE **F.** BARRETT, Attorney General, for Respondent ; ARCHIE **I.** BERNSTEIN, Assistant Attorney General, of Counsel.

WORKMEN'S COMPENSATION *Am—when award for compensation may be made.* Where employee on the State Game Farm of the Department of Conservation sustains an injury while lifting a fence post, arising out of the course of his employment, award for compensation therefor may **be** made, in accordance with the Act.

DAMRON, **J.**

George Walden was employed by the respondent on the State Game Farm of the Department of Conservation. On July 25, 1947, while in the performance of his duties as such employee, he received an injury, while lifting fence posts.

The record discloses that he reported the accident to his superior immediately, who recommended that he go home and if necessary employ a physician. At that time he was suffering excruciating pain in his left groin; however, claimant reported for work next day and continued at his employment for the respondent until August 23, 1947, when he was examined by Dr. Lyman A. Perkins of Yorkville, who diagnosed his disability as an indirect inguinal hernia. On August 26, 1947, the hernia was repaired by Dr. W. G. Eilert of Aurora, a specialist in surgery.

Claimant convalesced for eleven weeks thereafter, but never returned to his employment by the respondent, but workd at a restaurant which was owned and operated by his daughter. The record discloses that at the time of the injury the claimant was 69 years of age, had no children under 16 years of age dependent on him for support; that his annual earnings were $2,100.00; that his average weekly wage was $40.38 and therefore his weekly compensation rate is $19.50.

The record further discloses that the respondent paid Dr. W. G. Eilert of Aurora the sum of $100.00 for surgery but that the hospital was not paid by respondent. Claimant testified that he expended $10.00 for medicine and $10.00 for a truss and that the hospital bill amounted to $95.20.

The departmental report shows that the hernia first appeared shortly after the accident; and that the appearance was accompanied by pain; that the hernia was caused by the nature of the work being done by the claimant and it did not exist prior to the date of the accident.

Beatrice M. Allen was employed to report the testimony in support of this claim and to transcribe six copies

thereof for which she made a charge of $31.80 which we find is fair and reasonable.

Awards are hereby entered as follows: For a period of 11 weeks at $19.50 a week the sum of $214.50; for hospital, medicine, and truss the sum of $115.20 amounting to the total of Three Hundred Twenty-nine Dollars and Seventy Cents ($329.70) payable to claimant George Walden forthwith in a lump sum.

A further award is entered in favor of Beatrice M. Allen for transcribing the testimony in the sum of Thirty-one Dollars and Eighty Cents ($31.80).

The above and foregoing awards are subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4102—Claim denied.)

HERSEL L. HOUGHTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 9, 1948.

Petition of Claimant for Reheaizng denied January 11, 1949.

GIFFEN, WINNING, LINDNER & NEWKIRK, Attorneys for Claimant.

HON. GEORGE E'. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

NEGLIGENCE—DAMAGES—*although negligence may De admitted, damage may be denied for want of sufficient evidence.* Where negligence on the part of an employee of the Department of Public Health was admitted, in allowing water to damage phonographic records, albums and equipment of the claimant and the claimant produced only his uncorroborated evidence, which was indefinite, and failed to use reasonable care to minimize the damage, the claim was denied.

EVIDENCE—*what it must establish to support a claim.* The burden of proof is upon the claimant. It must be established by evidence from

which a court is able to ascertain the extent of such damages by the usual rules of evidence, and to a reasonable degree of certainty. It is also the well established rule that the best evidence must be produced of which the nature of the case is capable.

BERGSTROM, J.

Claimant filed his complaint on July 8, 1948 to recover the sum of $1,035.00 as the value of phonographic records, albums, and equipment, damaged or destroyed by the alleged negligence of an employee of respondent.

The record consists of the complaint, departmental report, transcript of evidence, claimant's waiver of brief, and respondent's waiver of brief.

The two questions presented for determination are, whether the alleged damage was caused by the negligence of respondent, and if so, the amount of the damages sustained by claimant. The undisputed evidence shows that Robert Brown was employed by respondent as a janitor in the Department of Public Health. It was part of his duties to fill a bottle with drinking water from an old fashioned bottle-type water cooler. He did this by connecting a rubber hose to the water faucet in the photographic dark room and inserting the other end of the hose to the bottle placed on the floor. He was in the midst of filling the bottle on the evening of September 9, 1947 when a fire broke out in the janitor's trash paper pickup box. He put out the fire but forgot about the running water, with the result that a considerable volume concentrated on the floor of the room where the bottle was being filled, seeped through the composition ceiling of the second floor, and then poured down in a considerable volume on to the phonograph records and equipment of claimant. From the record, we are of the opinion that the first question should be resolved in favor of claimant, and accordingly find that the damages sustained resulted through the negligence of respondent.

With reference to the question of damages — the burden of proof is upon the claimant. It must be established by evidence from which a court is able to ascertain the extent of such damages by the usual rules of evidence and to a reasonable degree of certainty. It is also a well established rule that the best evidence must be produced of which the nature of the case is capable. The only evidence of damage in th einstant case is the uncorroborated testimony of claimant without the production of any books, records, or paid bills. He testified that approximately 1,050 records were destroyed or damaged ; that their individual cost varied somewhat, namely, 49 cents to 85 cents each, and he thought that about $619.00 would cover their cost; that as far as he could remember he paid $56.00 for the damaged rack, then when further questioned said he traded $65.00 worth of records for the two new racks and that the records cost him about $46.00; that 850 envelopes, or shirts, were destroyed, which cost $3.50 per hundred, for which he claimed $24.00; that 800 record cards were destroyed, which cost $2.50 per hundred, for which he claimed $18.00; that 85 albums were destroyed, which had cost him approximately $64.00 to replace; that claimant, his wife, and another party worked approximately 265 hours after store closing hours to clean up the mess, for which labor he claimed $264.00. Obviously, the rather indefinite testimony of claimant is not the best evidence to establish claimant's damages to a reasonable degree of certainty from which the Court can make a just and fair award. The Court is also of the opinion that claimant did not use reasonable care and caution to mitigate or minimize the damage. He testified that immediately after he noticed the water leaking from above, it sprung a flood-gap through the ceiling and practically all the

water came down at once; that the phonograph record rack was so constructed that it caught the water as it fell and held it in the rack; that a substantial part of the damaged records were in the rack; that the rack, which was made of wood, got pretty well saturated and expanded considerably, resulting in a good deal of breakage. He testified, on cross examination, that he removed the things from the rack as soon as he could. Ordinarily, it takes more than a matter of minutes for wood to absorb water and expand to a point necessary for the breaking of records. Claimant was present when the water fell and it would appear that had he exercised reasonable alert action in removing the records from the rack that a substantial part could have been saved from breakage.

For the reasons stated, the claim is hereby denied.

(No. 4111—Claim denied.)

TRANSAMERICAN FREIGHT LINES, INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 9, 1948.

SAMUEL M. KANE, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General; WILLIAM J. COLOHAN, Assistant Attorney General, for Respondent.

EVIDENCE—*elements of proof necessary to sustain a claim.* The elements of proof necessary in a claim under Section 8, Par. (c) of the Court of Claims Act as amended (Ill. Rev. Stat. 1947, Chap. 37, Par. 439.8) are that the claimant must prove by a preponderance or greater weight of the evidence that the agent of the respondent was guilty of negligence which was the proximate cause of the damage and that the claimant's agent was in the exercise of due care. Award denied.

SAME—*no award can proceed from mere conjecture.* On the record the Court can merely speculate as to the proximate cause of the accident. No award can proceed from mere conjecture.

DAMRON, J.

This is a claim for damages arising out of a purported collision between claimant's tractor trailer and respondent's snow plow on February 14,1948, three miles north of Lincoln, Illinois, on State Route No. 121. The evidence in the case was taken before the commissioner on October 28, 1948.

Belmont Sheeley, the driver of claimant's tractor trailer, was the only witness who testified on claimant's behalf. He estimated the roadway at the point of the purported collision to be about 18 feet wide. He estimated the tractor trailer to be 8 feet wide with single wheels in front and dual wheels on the rear. He estimated the over-all length to be about 30 feet. Sheeley testified that the weather was clear but the roadway was icy.

He testified he was driving about 20 to 25 miles an hour northward on highway No. 121 and came up behind a snow plow which also was travelling north. He said he flashed his lights at the plow and waited until the lights on the plow were flashed back to him to proceed. When he first saw the snow plow, he said it was on the right side or east side of the highway. He estimated the shoulder on the east side to be about 6 feet wide and he said the plow was straddling the edge of the pavement with its left wheels on the pavement and its right wheels on the shoulder. Before passing, he said he moved over to the left side of the road with two wheels on the left shoulder. He said he did not know how many feet there were between the right side of his unit and the left side of the snow plow at the time he was passing the plow but estimated it might have been 5 or 6 feet between the two vehicles.

He said the cab of his tractor had passed on and

hail cleared the snow plow to his right when he felt an "awful jar". This was the first and only knowledge he had of a collision. He said thereafter his tractor travelled about 20 feet and slid in the ditch on the right side of the road and when he came to a halt he was facing east. No one was injured.

Thereafter he inspected his unit and found the driveshaft of his tractor in the center of the roadway, and the rear axle was broken and was setting at the rear of the trailer, the brakes and shackle were torn out of the unit and there was a sharp cut in the right inside rear tire of the tractor and also a cut on the rear frame of the tractor. The trailer was not damaged. He identified receipts evidencing $214.24 for repairs and testified the unit was out of commission for five days and that the fair and reasonable rental charge was $10.00 per day. He was not corroborated by other witnesses.

On cross examination he testified there was snow on the highway but as he approached the plow, he could see where the left of the highway had been cleared and the right side of road was then being cleared. He also testified on cross examination that he did not see the blade extending out from the plow. He felt no skid. He also testified there was no curve ahead of him when he came up behind the plow although he was watching the road ahead, yet he paid no attention to the lights of the plow. He testified he could not have been more than 2 feet ahead of the headlights on the snow plow when he felt a jar. This was all the testimony offered on behalf of the claimant before the commissioner.

William Awe, employee of the Division of Highways, was the driver of the snow plow in question, was the only defense witness. He testified that he was driving his truck in a northerly direction. There was a snow

blade about ten feet wide attached to the front of the truck.

It was "stormy, snowing, and blowing'' at the time. He was travelling on the right side of the road. The blade was at an angle of about 45 degrees to the front of the truck with the left end of the blade extending forward about four feet from the truck throwing the snow into the ditch. The over-all width of his vehicle with the plow in that position was 8 feet 4½ inches.

Awe further testified that immediately before the accident a vehicle approached from the rear and flashed a signal to pass but he did not return the signal because they were around a double curve at that point and the weather was such one could not see ahead. The vehicle coming from the rear followed him around the curve and after the snow plow came out of the curve and Awe had a clear view ahead he blinked his lights to indicate it was safe for the vehicle coming from the rear to pass.

Just as the vehicle was passing the plow there was a jar and the plow swung completely around going into the ditch on the west side of the road facing west. As the other vehicle was passing and at the time of the impact Awe was watching the left edge of the blade about eight inches to the right of the black center line of the road. He was travelling straight ahead not over ten miles per hour at the time; the truck not over twenty-five m.p.h. The truck travelled about *200* feet down the road after the impact. There was some ice on the pavement and at the point of passing a little snow over the ice. The front left end of the blade was damaged.

On cross examination Awe stated his truck was 6½ feet wide. The road was nineteen feet wide. His left wheels were 2½ feet to the right of the center line of the road and his right wheels were close to the edge of

the road but not off the shoulder. The left edge of his snow blade was about six inches to the east of the center line. The snow was about one-half inch deep on the ice.

Sheely testified on rebuttal that before he got to the curve he met a car approaching from the opposite direction and dimmed his lights for this car and then flashed them on again. At that time he was about a quarter of a mile back of the snow plow.

The foregoing is a carefully detailed statement of the only two witnesses to this accident.

It is not possible to reconcile the indisputable fact of the collision with the testimony of the respective witnesses. If Sheely as he was passing the plow was proceeding straight ahead about five or six feet to the left of the plow obviously the latter must have veered left into Sheely's unit. On the other hand if Awe was proceeding straight ahead at the time then claimant's unit must have veered or skidded into the snow plow. There is no evidence in this record which justifies this Court in resolving that question of fact adversely to respondent. It is reasonable to surmise that both vehicles did proceed straight ahead as both witnesses say and that Sheely as he passed did have sufficient room to clear the truck body of the plow, but failed to observe the blade extending four feet to the left of the body of the snow truck. If so, he was guilty of contributory negligence in failing to see the blade directly ahead of him. On this state of the record we can merely speculate as to the proximate cause of this accident. No award of this Court can proceed from mere conjecture.

The elements of proof necessary in claim under Section 8, Par. (c) of the Court of Claims Act as amended (Ill. Rev. Stat. 1947, Chap. **37, Par. 439.8)** are that claimant must prove by a preponderance or greater weight

of the evidence that the agent of respondent was guilty of negligence which was the proximate cause of the damages sustained 'by it and that claimant's agent was in the exercise of due care at the time of the accident.

It is the opinion of this Court, therefore, that the claimant has not established a clear right to an award for damages as required by law. Award denied.

(No. 4115—Claimant awarded **$75.32.)**

PHILLIPS PETROLEUM COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 0, 1948.

BLUM AND JACOBSON, Attorneys for Claimant.

HON. GEORGE F. BARRETT, Attorney General, for Respondent.

SUPPLIES—*where appropriations had lapsed, when payments may be made.* Where the claimant had furnished oil, gasoline and other materials and services to the several code departments and divisions of the respondent, in accordance with duly authorized contract, and the schedule **of** purchases was received by the several departments and divisions after appropriations had lapsed, an award will be allowed.

DAMRON, **J.**

The claimant herein, Phillips Petroleum Company, Inc., was authorized by contract duly entered into by it and the respondent to furnish oil, gasoline, and other materials or services to the several code departments and divisions of the respondent.

Under said contract all materials listed on claimant's exhibits "C" through "L" inclusive, being invoices Nos. 1055, $4.23; 2191, $2.84; 5259, $8.24; 6451, $2.46; 6441, $8.10; 8104, $3.79; 3535, $22.34; 8961, $1.43; 2539, $1.22; 5130, $1.67; 04058, $1.86; 4148, $1.77; 1849, $2.20; 1848, $3.59; 1847, $5.30; 1844, $2.16; and 1843, $2.12, totaling $75.32, were furnished to the departments and divisions as listed. The departmental report filed

October 4, 1948, shows that the places and dates of purchases are correct; that the volumes shown on said invoices check with the records of the respective departments and divisions, and the prices are in accordance with those previously agreed upon by the parties. The report further shows that all purchases included in the above numbered invoices were made prior to July 1, 1947, but that the schedule of purchases were received by the several departments and divisions after appropriations made by the 64th General Assembly had lapsed. The above purchases amounted to the sum of **$75.32.**

Claimant also files its exhibits "A" and "B" which relate to materials and services furnished to the Department of Public Safety, Division of State Police, by the Zaccaria Motor Sales, Coal City, Illinois, in the sum of $5.56.

Records of the Division of State Police show that the Zaccaria Motor Sales was paid for these items on invoice voucher Nos. P-19736 and P-19859. These claims therefore must be denied. Claims represented in exhibits "C" through "L" inclusive are allowed.

An award is hereby entered in favor of claimant, Phillips Petroleum Company, Inc., in the sum of Seventy-five Dollars and Thirty-two Cents **($75.32).**

(No. 4118—Claimant awarded $5,785.00.)

NADINE BURTON, WIDOW, ET AL., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 9, 1948.

NADINE BURTON, Claimant, Pro Se.

HON. GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award for compensation may be made.* Where the fatal injuries to the decedent arose out of and in the course **of** his employment, an award for compensation therefor may be made under the Act.

BERGSTROM, J.

Nadine Burton filed her complaint on September 8, 1948, as the widow of Marsh Burton, for compensation under the provisions of the Workmen's Compensation Act.

The record consists of the complaint, departmental report, stipulation that department1 report shall constitute the record, claimant's waiver of brief, and respondent's waiver of brief.

Her husband, Marsh Burton, came to his death on April 27, 1948 due to the severing of the aorta near the heart, tearing of the pericardial sac and a small tear of the apex of the heart, sustained when a link at the end of a 15.2 foot long chain, weighing 42 pounds broke, which was attached to an empty railroad coal car on a spur track and being moved by a Stake of Illinois truck (1948 Illinois license M-7407, International) at the Elgin State Hospital in Elgin, Illinois, at about **2** P.M. when the chain whipped back with great force and struck Mr. Burton on his back, who was to release said chain from either the truck or the car, resulting in the above injuries and causing his sudden death, said injuries having been ascertained by an autopsy granted by the wife of the decedent. The said accident happened while he was performing his regular duties while employed by the Department of Public Welfare. Immediately following the accident he was removed to the Institution General Hospital where he was pronounced dead on arrival.

There is no jurisdictional question presented by the record, and we find that the fatal injuries to the decedent

arose out of and in the course of his employment by respondent.

At the time of decedent's death he was married to Nadine Burton, and had one child named Dennis Gene Burton, nine months of age.

Decedent entered the service of the State on April 13, 1948 and sustained his fatal injuries on April 27, 1948, at which time his gross earnings amounted to $96.25 for 15 days, computed on his salary of $192.50 per month. His compensation rate, therefore, computed under Sec. 10, Par. (c) and Sec. 8 of the Workmen's Compensation Act, would be $19.50 per week.

Claimant is entitled to an award of $5,785.00 computed under Sec. 7, Pars. (a) (h) and (1) of the Workmen's Compensation Act.

An award is therefore made to claimant, Nadine Burton, in the sum of $5,785.00, payable as follows:

$ 624.00 which has accrued, is payable forthwith;
$5,161.00 payable in weekly installments of $19.50 commencing December 15, 1948 and continuing for 264 **weeks,** with a final payment **of** $13.00.

All future payments being subject to the provisions of the Workmen's Compensation Act, jurisdiction is hereby specifically reserved in this cause for the entry of such further order or orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 4042—Claim denied.)

AMELIA ATOR, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion. filed December ***17,*** 1948.

SAM SCHNEIDMAN AND HAROLD R. CLARK, Attorneys for Claimant.

HON. GEORGE F. BARRETT, Attorney General; HON. WILLIAM L. MORGAN, Assistant Attorney General, and HON. C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S OCCUPATIONAL DISEASES ACT—*where* ***award will not*** be made ***under.*** Where the claimant employed as cook at the Kankakee State Hospital, and while exposed to tuberculosis was regularly examined and did not disclose evidence of tuberculosis, and after she removed from such exposure, contracted tuberculosis, since it is not shown to have been contracted or sustained in the **course of** her employment, nor proximately caused by the negligence of the employer, she cannot recover under the provisions **of** Section **3** of the Workmen's Occupational Diseases Act.

ECKERT, C. J.

This action is brought under Section 3 of the Workmen's Occupational Diseases Act (Illinois Revised Statutes 1947, Chapter 48, Section 172.3), by Amelia Ator, an employee of the respondent, for damages sustained as a result of contracting tuberculosis while working as a cook at the Kankakee State Hospital at Kankakee, Illinois. Claimant is a woman 53 years of age, and she has been employed by the respondent since January 27,1942. Prior to that time, she lived at Quincy, Illinois, and was a strong,healthy woman, gainfully employed in various mercantile establishments.

From January 27, 1942, until January **1,** 1945, the claimant worked in the kitchen of the tubercular ward, being Ward 15 South, of the Kankakee State Hospital, as a relief cook, at least once each week. There, she came in contact directly and indirectly with patients of

the institution recovering from tuberculosis. She handled cooking utensils and dishes which had been washed and dried by patients having arrested cases.

The kitchen is located in the center of the ward, with an open entrance to serving rooms at each end. Swinging doors open from each of the serving rooms to a corridor. The dining rooms are immediately off the serving rooms with an open window or port between them. There is an outside door to the kitchen and this, together with the two openings into the serving rooms, furnish the only means of entering or leaving the kitchen. The food, after being prepared in the kitchen, was carried into the serving rooms and then passed to the dining rooms through the open port. Light switches were in the west serving room and the telephone was in the east serving room. Claimant was required to use these facilities daily. The doors connecting the serving rooms and hall corridor were frequently left open. A toaster in the kitchen and one compartment of the ice box were used at night by attendants who came directly from the tubercular ward to the kitchen.

From January 1, 1945, until June, 1946, claimant worked as a regular cook at the staff house, and as a relief cook at the superintendent's residence. Nothing in the record indicates any exposure to tuberculosis during this period.

At intervals during her employment at the institution, claimant was required to work more than eight hours in a day and more than forty-eight hours in a week. This is in violation of "An Act concerning the hours of employment of females in certain occupations" (Illinois Revised Statutes 1947, Chapter 48, Section 5), which provides :

"No female shall be employed ..... in any public or private institution or offices thereof, incorporated or unincorporated in this State, more than eight hours during any one day nor more than forty-eight hours in any one week. ..... ."

The violation of this statute by the respondent is clearly the violation of a statute intended for the protection of the health of employees, and constitutes negligence under Section 3 of the Workmen's Occupational Diseases Act. (*Wheeler* vs. *State*, 12 C.C.R. 254). Such a violation creates a cause of action in favor of an employee, against the State, where such employee sustains injury to her health by reason of disease contracted or sustained in the course of her employment, as a result, thereof. (*Wheeler* vs. *State*, supra).

Claimant, however, had a routine X-ray examination at the Kankakee State Hospital in 1945, which showed no evidence of tuberculosis. This was subsequent to the period during which she alleges she was exposed to the disease. No exposure is alleged or proved subsequent to January 1, 1945. Claimant was first found to have tuberculosis in June, 1946.

The only medical testimony in the record is that of Dr. Emmett F. Pearson, of Springfield, Illinois. Dr. Pearson had not examined Mrs. Ator, nor had she been under his care at any time. Although she had spent nine months in a sanitarium at Quincy, Illinois, no member of that staff testified. Dr. Pearson's testimony was confined almost entirely to answering a hypothetical question which included most of the facts in reference to her employment prior to January 1, 1945 and which were proved at the hearing before Commissioner Blumenthal. After a recital of these facts, the question concluded:

"If at a later date this woman developed pulmonary tuberculosis, Doctor, have you an opinion as to whether there might or could, with reasonable medical certainty, be a causal relationship between the em-

ployment and working environment which I have described in this question and the tubercular condition of this woman?"

To this question, Dr. Pearson replied:

"I believe that there is a probable causal relationship between the employment and working environment and the contraction of the disease by the woman."

It is quite obvious that the question was misleading. "At a later date," was ambiguous and indefinite. The question did not, in any way, take into account the fact that claimant, after January 1, 1945, did not work in the kitchen of the tubercular ward, and was not thereafter exposed to tuberculosis in the institution. It omitted any reference to her employment from January 1, 1945, to June, 1946, during which time she was found to be free of tuberculosis. Dr. Pearson answered a question which might sustain an award, if claimant, in January of 1945, had been found to be suffering from tuberculosis. There is not a scintilla of evidence that an exposure to tuberculosis between 1942 and 1945 would be the cause of tuberculosis appearing in June, 1946, an examination during 1945 having shown no tuberculosis.

Although the record discloses a clear violation of the statute in regard to female employment, and although the record discloses that claimant was exposed to tuberculosis during her employment prior to January 1, 1945, the record in no way sustains the necessary allegation that the tuberculosis contracted in June, 1946, was contracted or sustained in the course of claimant's employment, as a result thereof.

Since claimant's tuberculosis is not shown to have been contracted or sustained in the course of her employment, nor proximately caused by the negligence of the employer, she cannot recover under the provisions of

Section 3 of the Workmen's Occupational Diseases Act.

The testimony taken at the hearing before Commissioner Blumenthal, at Chicago, was taken and transcribed by A. M. Rothbart, who made charges therefor in the amount of **$122.45.** These charges appear reasonable and proper.

The testimony taken at the hearing before Commissioner Blumenthal, at Springfield, was taken and transcribed by Hugo Antonacci, who made charges therefor in the amount of **$22.50.** These charges appear reasonable and proper.

An award is therefor entered in favor of A. M. Rothbart in the amount of **$122.45,** and an award is entered in favor of Hugo Antonacci in the amount of **$22.50,** both payable forthwith.

An award to claimant is denied.

(No. 4077—Claimant awarded **$6,076.00.**)

HERMAN DREZNER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion *filed January 11, 1949.*

JOSEPH I. BULGER, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General; HON. WILLIAM J. COLOHAN, Assistant Attorney General, for Respondent.

CIVIL SERVICE—*where employee illegally discharged is entitled to compensation.* A civil service employee, illegally discharged and subsequently restored to his position by judgment of a court of competent jurisdiction is entitled to the salary provided for said position for the period of the illegal discharge, where he is ready, able and willing to perform the duties of such position and tendered his services to his employer.

ECKERT, C. J.

Claimant, Herman Drezner, was certified on May 1, 1939, by the Illinois Civil Service Commission to the

Illinois Liquor Control Commission, and was thereupon employed by the Illinois Liquor Control Commission as a Field Investigator II. On June 2, 1945, the Liquor Control Commission filed notice of removal and discharge of claimant with the Illinois Civil Service Commission. A hearing was had before the Civil Service Commission, and on December 14, 1945, the charges against claimant were sustained, and claimant was discharged.

On January 15, 1946, claimant filed suit in Superior Court of Cook County, Illinois, against the Illinois Civil Service Commission, to review the order of discharge. The Superior Court subsequently, on November 13, 1946, confirmed the order of the Illinois Civil Service Commission. Claimant thereupon took an appeal to the Supreme Court of Illinois.

On September 18, 1947, the Supreme Court reversed the order of the Superior Court of Cook County (*Drezner* v. *Civil Service Commission,* 398 Ill. 219), and the mandate of the Supreme Court was filed with the clerk of the Superior Court on November 25, 1947. Pursuant to this mandate, the Superior Court on December 19, 1947, entered an order in accordance with the mandate.

Claimant thereupon served a demand on both the Illinois Civil Service Commission and the Illinois Liquor Control Commission for reinstatement. On January 12, 1948, claimant not having been reinstated, he filed a petition for mandamus against the Illinois Civil Service Commission in the Superior Court of Cook County to restore him to his position and for payment of accrued salary.

In answer to the petition for mandamus, the Illinois Civil Service Commission alleged that the salary for the classified position of Field Investigator II as appropriated by the General Assembly for the biennium of

July 1, 1943, to June 30, 1945, and for the biennium of July 1, 1945, to June 30, 1947, had lapsed and that no funds remained from which claimant could be reimbursed for the salary allegedly due.

On February 27, 1948, judgment was entered by the Superior Court of Cook County in the mandamus proceeding, ordering and directing that claimant be restored to his position, that he receive his salary as a classified civil service employee from July 1, 1947, to February 29, 1948, in the amount of $270.00 per month, that such salary be paid from the then current biennial appropriation, and that the judgment should in no way prejudice claimant's right to salary due him from June 2, 1945, to July 1, 1947. Claimant was thereupon restored to his position.

On March 17, 1948, claimant filed suit in this Court to recover his salary from June 2, 1945, the date of his discharge, to July 1, 1947, in the sum of $196.00 for June, 1945, and in the sum of $5,880.00 for the period of July 1, 1945, to July 1, 1947. He alleges that during the period in question he was illegally prevented from performing the duties of his position as Field Investigator 11, and was illegally deprived of the salary accruing to that position; that during all of that time he was ready, able and willing *to* perform the duties of the position and was illegally prevented from doing so; that the salary of such Field Investigator, from June 2, 1945, to June 30, 1945, was $210.00 a month, and from July 1, 1945, to July 1, 1947, was $245.00 a month; that there is due and owing to him for salary for that period the aggregate sum of $6,076.00; that the salary appropriations for the period of June 2, 1945, to July 1,1947, have lapsed; and that there were sufficient funds on hand

when the respective appropriations lapsed to pay the salary alleged to be due.

From the record it appears that claimant mas a duly qualified civil service employee of the State of Illinois; that he was illegally discharged and wrongfully prevented from performing the duties of his position; and that he was subsequently reinstated by order of a court of competent jurisdiction. He has been diligent in the protection of his rights, and at all times for which he seeks payment of salary, he was ready, willing, and able to perform the duties of his position, tendered the performance thereof, and such tender mas refused. **A** civil service employee, illegally discharged and subsequently restored to his position by judgment of a court of competent jurisdiction is entitled to the salary provided for said position for the period of the illegal discharge where he is ready, able, and willing to perform the duties of such position and tendered his services to his employer. *(Wilson.* v. *State,* 12 C.R.R. **413;** *Drezner* v. *State,* 15 C.C.R. 16). Respondent offered no proof that claimant's salary had been paid to a de facto incumbent prior to claimant's reinstatement, and offered no proof that any other agent or de facto incumbent performed the duties of claimant's position during the period in controversy.

The Court, therefore, finds that claimant is rightfully entitled to an award for payment of his salary during the period of his allegal discharge, in the amount of $6,076.00.

An award is entered in favor of the claimant, Herman Drezner, in the amount of $6,076.00.

(No. 4096—Claimant awarded $1,710.00.)

JULIUS SBRAGIA, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

***Opinion** filed January 11, 1949.*

STEPHEN M. FLEMING, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, for Respondent; WILLIAM J. COLOHAN, Assistant Attorney General, of Counsel.

WORKMEN'S COMPENSATION AM—when *award for compensation may be made under.* Where employee sustains accidental injuries, arising out of and in the course of his employment, an award for compensation therefor may be made under the Act.

DAMRON, J.

This is a claim for benefits under the Workmen's Compensation Act. On December 19, **1946,** the date this cause of action arose, Julius Sbragia, the above named claimant, resided at 3848 Newcastle Avenue, Chicago, Illinois. He was 64 years of age, married, but had no children under 16 years of age dependent upon him for support.

He was first employed by the Division of Highways on June **1,** 1945, as a common laborer at a wage rate of 65 cents an hour. He was employed regularly in this classification from the date of his employment until the date of his injury. His wage rate was increased to 75 cents an hour on July **1,** 1945. Earnings exclusive of overtime in the year preceding his injury totaled $1,569.75.

December 19, 1946, claimant was one of a group of men assigned to remove ice from the surface of Forest Preserve Drive adjacent to Dunning State Hospital in Cook County. At the time of the accident, Mr. Sbragia was scattering salt on the ice to cause it to melt. Mr. Andrew Grafmiller was operating a motor patrol grader

used to scarify and push the partially melted ice off the highway. At approximately 10:50 A.M., about one block south of Irving Park Boulevard, Mr. Grafmiller backed the motor patrol toward Mr. Sbragia. Mr. Grafmiller did not see Mr. Sbragia, and, he in turn did not observe the approaching patrol grader until one of the wheels struck and knocked him down. The wheel of the vehicle knocked claimant to the ground where he received divers injuries to both legs.

Mr. Sbragia was taken to Dunning State Hospital where first aid mas given. He was then taken to St. Luke's Hospital, Chicago, and placed under the care of Dr. H. B. Thomas, professor emeritus of orthopedics, University of Illinois College of Medicine.

At the time of the taking of the evidence, a stipulation was entered into by and between the parties hereto and the above facts were recited in the stipulation. In addition thereto it was further stipulated that respondent furnished all necessary medical and hospital care and no claim is made for the reimbursement to claimant in that regard. It is further stipulated that claimant was temporarily and totally disabled from December 20, 1946, to June 21, 1947, and that respondent paid the claimant during that period the sum of $475.70, representing 26 3/7 weeks at $18.00 a week.

It was further stipulated that respondent had immediate notice of the injury and the claim was filed in due time and no jurisdictional questions raised.

The report of the Division of Highways filed herein and made a part of this record shows that respondent's Division of Highways paid the sum of $648.70 on behalf of the claimant's medical expenses, which included the fees of Dr. H. B. Thomas, St. Luke's Hospital, Chicago, and claimant's expenses to Chicago.

Dr. Albert C. Field was called as a witness on behalf of the claimant. He testified that he had examined Sbragia on October 28, 1948 and found that his left knee was enlarged, the fossa on both sides of the patella rounded out with crepitation present in both knees. In supine position the right heel could be brought within two inches of the buttocks, the left within 6½ inches. Plantar flexion was limited about twenty degrees, dorsal flexion about fifteen. Pronation and supination of the left leg in comparison with the opposite leg was limited about one-half the normal range over the malleoli. There was also some rigidity on dorsal and plantar flexion of the right ankle joint. He interpreted X-rays he had taken as confirming the fractures already described. In addition he found evidence of separation of the fragments, dislocation of the tip of the malleolus, and bony injury in the articulation of the astragulus with the fibula. In his opinion, claimant has a permanent loss of use of 45% of his left leg and about 20% of his right.

Dr. H. B. Thomas had been called as a witness on behalf of the respondent but was unable to be present because of operations scheduled at the time of the hearing. It was stipulated between the parties hereto that if Dr. Thomas was present, his testimony would be on the basis of the factual statements contained in his reports submitted to the Division of Highways on December 27, 1946; April 11, 1947; and August 4, 1947.

An examination of these reports show that X-rays taken at the St. Luke's Hospital revealed a trimalleolar fracture of the left fibula, externally comminuted and somewhat impacted with lateral and posterior displacement of the distal fragment; a small chip fracture of the head of the astragulus and a similar fracture along the articular margins of the astragulus.

A reduction on December 20th mas not satisfactory and another was made on the 24th.

Dr. Thomas concluded that, as of August 3, 1947, claimant continued to have a 20% disability of the left ankle and 10% in the right with the prognosis fair to good.

Claimant testified that previous to the accident he worked 8 hours a day without any difficulty, but that at present his leg swells and he continues to suffer considerable pain in his left leg and some discomfort in his right foot.

It is to be noted that Dr. H. B. Thomas had not exaxmined the claimant since August 3, 1947. Dr. Albert C. Field, however, examined this claimant on October 28, 1948, and he found a far greater disability existing in claimant's injured limbs than did Dr. Thomas more than a year prior thereto. It is apparent that claimant did not attain the amount of recovery anticipated by Dr. Thomas on August 3, 1947.

From the evidence, X-ray exhibits, reports of Dr. H. B. Thomas, and the testimony of Dr. Field and the claimant, we make the following findings: That claimant sustained a permanent partial disability of 35% in his left leg and 15% permanent partial disability in the right leg for which lie is to be compensated under the provisions of Section 8, Par. (e) of the Workmen's Compensation Act.

An award is hereby entered in favor of claimant for 35% permanent partial loss of use of his left leg for which he is entitled to be paid 66½ weeks at $18.00 a week, amounting to the sum of One Thousand One Hundred and Ninety-seven dollars ($1,197.00); and, for 15% permanent partial loss of use of his right leg, amounting to the sum of Five Hundred and Thirteen Dollars

($513.00), representing 28½ weeks at $18.00 a week or a total award of One Thousand Seven Hundred and Ten Dollars ($1,710.00).

Of this amount the sum of One Thousand Four Hundred and Sixty-five Dollars and Seventy-one Cents ($1,465.71) has accrued as of January 11, 1949. The remainder of said award amounting to the sum of Two Hundred Forty-four Dollars and Twenty-nine Cents $(224.29) is payable to him at $18.00 a week in weekly installments commencing January 18, 1949 for thirteen weeks with one final payment of Ten Dollars and Twenty-nine Cents ($10.29).

A. M. Rothbart was employed to take and transcribe the testimony at the hearing before the Commissioner for which he made a charge of $40.00. We find this sum reasonable, customary, and fair for the services rendered. An award is hereby entered in favor of A. M. Rothbart in the sum of Forty Dollars ($40.00).

These awards are subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4103—Claimant awarded $4,179.83.)

MARY ANN CLOHSEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 11, 1949.

WILLIAM A. MURPHY, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General; HON. WILLIAM J. COLOHAN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award for compensation under may be made.* Where an employee sustains accidental injuries resulting in death of employee, arising out of and in the course of his

employment, an award for compensation therefor may be made in accordance with the Act.

SAME—*when attack upon parole agent* **by** *parole violator will be considered accidental injury under.* Where the employee, an adult parole agent of the Department **of** Public Safety, while returning the violator by train, disengaged one handcuff to permit entrance of violator to rest room and was attacked and rendered unconscious and died **in** consequence thereof; such attack was held to be accidental within the meaning of the Act, and an award allowable accordingly.

ECKERT, C. J.

On April 5, 1947, William J. Clohsey, employed as an adult parole agent by the Department of Public Safety, Division of Supervision of Parolees, while returning a parole violator, Robert Concannon, from Detroit, Michigan, to Chicago, was attacked by the prisoner. The decedent and Concannon were traveling on the New York Central train No. **75** known as the Mercury. **A** short distance east of Porter, Indiana, the prisoner asked to go to the rest room, and requested the decedent to release one of his handcuffs. Mr. Clohsey complied with the request, and stood outside the partially closed rest room door, holding on to the ring end of the long chain attached to the handcuffs.

The prisoner emerged suddenly from the rest room and using the loosened handcuff, struck the decedent who was knocked unconscious. The prisoner then took the handcuff keys from the parole agent, loosened his other hand from the cuff, and escaped from the train as it pulled into Porter, Indiana. Mr. Clohsey was found unconscious by the conductor, and from the character of his injuries it appeared that he had been repeatedly kicked or struck by the prisoner after he lost consciousness.

The Chicago police were notified immediately upon the train's arrival in Chicago. The Chicago office of the Department of Public Safety, Division of Supervision

of Parolees, was also notified. Mrs. Clohsey called the family physician, Dr. Nicholas J. Balsamo, who removed Mr. Clohsey to the Loretto Hospital. There he was found to be suffering from a dislocation of the left humerus, a large fracture of the humeral head, a fracture and dislocation of the left shoulder with multiple lacerations and severe contusions of his chin, face and ears.

On April 10,1947, Mr. Clohsey returned to his home for convalescence, and during that period suffered an acute urinary retention. Dr. William J. Baker, of Chicago, performed an operation to relieve this condition at St. Luke's Hospital, in Chicago, on May 3, 1947. Mr. Clohsey was hospitalized from May 1st to May 12th. His post-operative recovery was never complete, however, but it was sufficient to allow him to return to light office work on July 1, 1947, where he performed limited duties until January 1, 1948. He was then advised to remain at home, and on January 18, 1948, a second operation was performed at St. Luke's Hospital for the same urinary condition. He never recovered from this second operation, and died on March 6, 1948.

Dr. William J. Baker, who performed the transurethral prostatic resections and revision of the bladder neck, testified on behalf of claimant. Dr. Baker stated that in his opinion there was a causal connection between the injuries sustained by the decedent on April 5, 1947, and his death on March 6, 1948. He stated that the injuries precipitated decedent's prostatic condition which was analogous to hyperstatic pneumonia developing after an injury occasioning bed rest.

At the time of the accident, decedent and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the injury and claim for compelisation were made within the time

provided by. the Act. The evidence is uncontradicted, and clearly sustains claimant's contention that decedent's death was a result of accidental injuries which arose out of and in the course of his employment.

Decedent's annual earnings for the year next preceding his injury were $2,760.00, making an average weekly wage of $53.07. His compensation rate would, therefore, be the maximum of $15.00 per week. The injury having occurred subsequent to July 1, 1945, but prior to July 1, 1947, this must be increased 20%, making a compensation rate of $18.00. Decedent received on account of temporary total disability the aggregate amount of $1,011.02. Under the provisions of the Workmen's Compensation Act, however, he was only entitled to compensation at the rate of $18.00 a week for 21 5/7 weeks, or the sum of $390.85. Decedent thus received $620.17 in excess of the amount to which he was rightfully entitled, and this excess must be deducted from any award made to claimant.

Claimant is therefore entitled to an award on account of the death of William J. Clohsey, under the provisions of the Workmen's Compensation Act of this State, in the amount of $4,800.00, less the sum of $620.17 paid to decedent for non-productive work, or the sum of $4,179.83.

A. M. Rothbart of Chicago, Illinois, was employed to take and transcribe the evidence at the hearing before Commissioner Blumenthal. Charges in the amount of $26.80 were incurred for these services, which charges are fair, reasonable and customary.

An award is therefore entered in favor of A. M. Rothbart in the amount of $26.80, payable forthwith.

An award is entered in favor of Mary Ann Clohseg,

widow of William J. Clohsey, in the amount of $4,179.83, to be paid to her as follows:

$ 810.00, which has accrued, is payable forthwith;
$3,369.83, is payable in weekly installments of $18.00 per week, beginning on the 23rd day of January, A.D. 1949, for a period of 187 weeks, with an additional final payment of $3.83.

All future payments being subject to the terms and provisions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4108—Claimant awarded $5,200.00.)

FAUN E. PETERSON, WIDOW, ET AL., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

***Opinion filed** January 11, 1949.*

JOSEF T. SKINNER, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and ARCHIE I. BERNSTEIN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—when award for compensation nnder may be made. Where employee sustains accidental injuries, resulting in death, arising out of and in the course of his employment, an award for compensation therefor may be made under the Act.

BERGSTROM, J.

Claimant, Faun E. Peterson, is the widow of Harry D. Peterson, deceased, who was formerly employed by the Department of Public Works and Buildings, Division of Highways, of the State of Illinois. On the 3rd day

of June, 1948, while engaged in the pavement repair of highway Illinois Route No. 26 approximately two to two and one-half miles south of Ohio, Illinois, he was struck by an automobile. He died that night. Claimant, as widow, seeks an award for the death of her husband under the provisions of the Workmen's Compensation Act.

From the evidence and testimony, including the report of the Division of Highways which has been filed in this case, it appears that at the time of the accident the decedent was one of a group of employees engaged in filling pavement cracks with hot tar or bituminous material on Illinois Route No. 26 in Bureau County. At approximately 10:30 A.M. the decedent was filling a crack in the west (southbound traffic lane) half of the pavement. He had begun pouring at the westerly edge of the pavement and was proceeding easterly, in a stooped position, toward the center line of the pavement. At this time a southbound car driven by Mr. Henry C. Warner of Dixon, Illinois, struck the decedent. Mr. Warner had been driving in the east (northbound) lane when passing other employees working to the north of the decedent. He had turned back into the west or righthand lane of the highway when his car hit the decedent. Upon impact the decedent was knocked unconscious; he bled from his nose and the left side of his head.

Immediately following the accident Mr. Peterson was taken to the Julia Rackley Perry Memorial Hospital at Princeton, Illinois. He was placed under the care of Dr. Joseph W. O'Malley of Ohio, Illinois. Upon examining Mr. Peterson, Dr. O'Malley found he had a large soft tissue wound on the left temporal region of his head, marked ecchymoses on both eyelids, bleeding from the nostrils and mouth and left ear. On palpation, he had

a definite break in the outer skull table in the left temporal region. Mr. Peterson was unconscious and remained so until his death at 11:30 P.M. Dr. O'Malley, who continued to attend Mr. Peterson, stated his coma deepened until his death. It was Dr. O'Malley's conclusion that a severe concussion of the brain and compound fracture of the skull in the left temporal region, together with severe hemorrhages in the cranial cavity, were the causes of death.

In his report to the division dated June 10, 1948, Dr. O'Malley stated:

"Nature of Injury: 1. Concussion brain, severe. 2. Fractures skull, severe—basal and linear in left temporal frontal region. Treatment: Wound cleansed and dressed. Patient put to bed and watched. One-half hour blood pressure, pulse, and respiration readings. X-rays: Portable of skull. Patient died June 3, 1948, 11:25 P.M."

At the time of the accident the decedent and respondent were operating under the provisions of the Workmen's Compensation Act of this State and notice of the accident and claim for compensation were made within the time provided in the Act. The accident arose out of and in the course of decedent's employment. Decedent had been employed by respondent continuously since February of 1941. He received $2,418.90 as salary during the year preceding the accident. The decedent had no children under sixteen years of age dependent upon him for support at th time of his death.

Claimant is therefore entitled to an award under Section 7 (a) of the Workmen's Compensation Act, in the amount of $4,000.00, which must be increased thirty percent under Section 7 (l), making a total award of $5,200.00. This is payable at a weekly compensation rate of $19.50.

Frances E. Scott was employed to take and transcribe the evidence at the hearings before Commissioner

Young, and submitted her invoice for these services in the amount of $50.00, which charges are fair, reasonable and customary.

An award is therefore made to claimant, Faun E. Peterson, in the amount of $5,200.00, payable as follows:

$ 624.00 which has accrued, is payable forthwith;
$4,576.00 is payable in weekly installments of $19.50 commencing on January **21, 1949** and continuing for **234** weeks, with a final payment of $13.00.

An award is also entered in favor of Frances E. Scott, in the amount of $50.00, payable forthwith.

All future payments being subject to the provisions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor, as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 4127—Claimant awarded $2,500.00.)

JOSEPH GREEN, A MINOR, BY AND THROUGH HIS MOTHER AND NEXT FRIEND, RUTH ELIZABETH GREEN, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed January 11, 1949.

REED F. CUTLER, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award of maximum allowance for loss of eye may be made under.* Where a minor, student of the University High School, maintained and operated by the Illinois State Normal University, while serving voluntarily as and performing the duties assigned to him of a monitor, sustained the loss of his right eye by being struck by a loosely fastened door check, and incurred

substantial medical and hospital expenses in connection therewith. Held that it was the duty of the State to maintain the door check in a safe condition and an award of $2,500.00 compensation made in accordance with the Act was not unreasonable.

BERGSTROM, J.

Claimant, Joseph Green, a minor, by and through his mother and next friend, Ruth Elizabeth Green, filed his claim on October 15, 1948 for recovery of $2,500.00 damages for injury to claimant on February 10, 1948, caused by his being struck in the right eye by a door check under the operation and control of respondent, which resulted in the loss of the right eye of claimant and which had to be replaced by an artificial eye.

The record consists of the complaint, departmental report, stipulation, waiver of brief of claimant, waiver of brief of respondent, and claimant's exhibits 1 to 4 inclusive.

There is no disagreement with respect to the material facts. The complaint alleges that the State owns, operates and maintains the Illinois State Normal University at Normal, Illinois, and as part of the functions of the said Illinois State Normal University it also conducts and operates a University High School on the campus and in the buildings of the Illinois State Normal University; that claimant, Joseph Green, on February 10, 1948, was a pupil or student enrolled in the State University High School; that he was voluntarily serving as a monitor, and while performing the duties of a monitor, which were assigned to him, he was entering a door on the north side of a building which is known as the "Metcalf Building"; that while entering the said door he was struck in his right eye by a part of the said door or equipment attached thereto which had worked loose and functioned improperly; that as a result of said injury claimant suffered great pain, incurred extensive

medical and hospital expense, and lost the sight of his right eye, it being necessary in the treatment thereof to have the said eye removed and replaced by an artificial eye. The departmental report concurs in the correctness of these allegations.

In the stipulation filed in this cause it is stated that the injury of claimant was caused by his being struck in the right eye by a door check. It is apparent, from an examination of claimant's exhibits 3 and 4 which are true and correct photographic reproductions of the door check as presenently located and where previously located, that the screws holding the check had worked loose, causing it to fall. It was the duty of respondent to maintain this door check in a safe condition for ordinary usage so as not to injure persons who were continually passing through this entrance door which it held in check and, having failed in this duty, is guilty of negligence, and the Court so finds.

Claimant incurred medical and hospital expenses, as shown by claimant's exhibits 1 and 2; to The Gailey Eye Clinic $315.00, and to The Mennonite Hospital $153.05. It will also be necessary for him to replace the artificial eye from time to time. Considering the nature and extent of the injury and the expenses incurred and to be incurred, the maximum award allowed under Paragraph (c), Section 7 of the Court of Claims Act of $2,500.00 is not an unreasonable sum to allow claimant for damages sustained as a result of this injury.

An award is therefore made to Ruth Elizabeth Green, as mother and next friend of claimant, Joseph Green, a minor, for his use and benefit, in the sum of $2,500.00.

(No. 4129—Claimant awarded $2,382.50.)

LAWRENCE LANDRETH, Clainiant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 11, 1949.

JOSEPH B. SIEMER, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, for Respondent; C. ARTHUR NEBEL, Assistant Attorney General, of Counsel.

DAMRON, J.

WORKMEN'S *COMPENSATION* ACT—*when award* **for** *compensation under may be made.* Where an employee sustains accidental injuries, arising out of and in the course of his employment, an award for corn pensation may be made under the Act.

SAME—*when loss of eyesight caused by stone thrown, breaking lenses and damaging eye will be considered as* **within** *meaning* **of.** Where an employee of the Department of Mines and Minerals, received orders from his superior to appear as witness at a trial, and while parking his automobile was struck on the eye-glass lens over his left eye by a stone thrown by a boy and sustained the loss of use of his eye, held that such injury was the result of an accident arising out of and in the course of his employment, an award for the injury was made under the Act.

DAMRON, J.

The claimant, Lawrence Landreth, on the 2nd day of December, 1947, was an employee of the respondent, in the Department of Mines and Minerals, Division of Oil and Gas. On that day, he received orders from his superior to appear as a State witness in a trial at the Effingham County court house. He responded and testified. After testifying, the claimant immediately left the court house and started for his automobile which was parked a block west of the court house and one-half block south, on Fifth Street in Effingham.

At the place where his car was parked, an addition was being added to a building, and there a group of boys was playing in a sand and gravel pile; just as the claim-

ant, who wore eye-glasses, was proceeding to unlock his automobile, one of the boys threw a stone, striking claimant, shattering the lens over his left eye, causing fragments of it to penetrate the pupil of his left eye. He was immediately taken into the office of an optometrist, who examined the injury and called Dr. Glen R. Marshall of Effingham, who removed the fragments of the lens from his eye.

On August 23, **1948,** Dr. Glen R. Marshall filed a report relative to the injury of claimant which reads as follows:

"On examination, a piece of his lens was found to have penetrated the eyeball, cut in a rather large place at the limbus. The anterior chamber was completely collapsed. The iris was bulging through the hole.

The glass was removed. Patient was advised hospitalization but insisted on going home at which place he was treated with ice bags and penicillin. . . . His eye quieted down and appears to be fairly well healed. The last vision I have recorded is 20/20 and in the injured eye 20/400."

On November 20, **1948,** the claimant was examined by Dr. S. F. Henry of Effingham. His report is a part of this file. Part of said report reads as follows:

"I find by examination that the pupil of his left eye is elongated and a definite scar on the cornea, toward the inner canthus only partially over pupil. . . . The eyeball feels a bit harder, firmer than the right eye.

The pupil does not react to light, or accommodation. I can see a large dark area in the outer lower retina which is perhaps a detachment.

He says he cannot see out of this eye. Vision in the right eye is 20/30 without glasses and 20/20 with ≠ **.50** for distance.

I used a red glass over his good right eye and all figures written on a card in red could not be seen by him yet black ones were; so from my examination I feel sure this man is blind in his left eye and from the history of an accident on December 2, **1947,** coupled with the fact that I have previously tested this man's eyes for glasses on April **25, 1945** and then with ≠ **.50** ,cylinder ≠ **.75** axis **180** he had 20/20 vision in his left eye.

From the above, I conclude that this man now is blind in his left eye, which is due to an accident."

The record discloses that since September 1, 1945 his annual salary amounted to $2,880.00. He is married, was 60 years of age and had no children under the age of 16 years dependent upon him. The record further discloses that the respondent had immediate notice of the injury and all provisions of Section 24 have been fully complied with.

On the basis of this record we make the following finding: That on December 2, 1947, Lawrence Landreth, the above named claimant, was injured during the course of his employment for the respondent and as a result of said injury he is industrially blind in his left eye for which he is entitled to an award; that his average weekly wage was $55.38; and that his weekly compensation rate was $19.50.

An award is hereby entered in favor of Lawrence Landreth in the sum of Two Thousand Three Hundred and Forty Dollars ($2,340.00) to compensate him for the loss of vision of his left eye to be paid to him at $19.50 per week for 120 weeks, as provided under Sec. 8, Par. (e) of Workmen's Compensation Act.

The record further discloses that claimant paid to Dr. Glen R. Marshall the sum of Forty-two Dollars and Fifty Cents for medical treatment rendered by him, for which claimant is entitled to be reimbursed.

An award is therefore hereby entered in favor of Lawrence Landreth for Forty-two Dollars and Fifty Cents ($42.50) for that purpose.

Of the sum awarded him for the loss of vision of his left eye, there is now accrued as of January 11, 1949, the sum of One Thousand One Hundred and Thirty-one Dollars ($1,131.00) representing 58 weeks, which together with the medical expenses totals One Thousand One Hundred and Seventy-three Dollars and Fifty Cents

($1,173.50) and is payable forthwith. The remainder of said award, amounting to the sum of One Thousand Two Hundred and Nine Dollars ($1,209.00), is payable to claimant at the rate of $19.50 per week beginning January 19, 1949, and continuing weekly thereafter for 62 weeks at said compensation rate until the last mentioned sum is fully paid.

Claimant herein having suffered the complete loss of vision of an eye, under Section 8, Paragraph (e), Subparagraph 20, requires that payment be made into the special fund in the amount of One Hundred Dollars ($100.00).

Award is therefore hereby made as follows:

To the State Treasurer of the State of Illinois, as ex-officio custodian of the Workmen's Compensation special fund, the sum of One Hundred Dollars ($100.00); said sum to be held and disbursed by the said State Treasurer in accordance with the provisions of the Workmen's Compensation Act of this State.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3964—Claimant awarded **$2,861.58** plus an annual pension for life of $627.45—no payments to **be** made until said awards shall **equal** $22,000.00 recovered by claimant. Claimant's request that claim he denied, refused.)

VERNON W. KAYS, Claimant, *vs.* **STATE OF ILLINOIS**, Respondent

Opinaon *pled May 13, 1947.*

Supplemental Opinion pled February 14, 1949.

HENRY L. COWLIN, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and HENRY L. MORGAN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—award tinder as it *affects* State Employees Retirement *System.* Where a State police officer sought to have his claim for compensation under the Act for injuries arising out of and in the course of his employment, denied by this Court, and having recovered $22,000.00 from third parties on account of the injuries, the denial of the award as requested by the claimant would place claimant in position before the Pension Board to show that an award was denied and no compensation received. The State under such circumstances could lose its rightful offset for the amounts it has already paid on account of the accident under the provisions of the Workmen's Compensation Act. The request of the claimant was declined and an award made of $2,861.51 plus an annual pension for life of $627.45, no payments to be made until said awards shall equal the sum of $22,000.00 recovered by the claimant.

BERGSTROM, J.

According to report of the Division of State Police, which is part of the record, on April 16, 1945 claimant, Officer Vernon Kays, with Officer Clyde Kingsbury, were patroling the highways in a State police car while assigned to the 4:00 P.M. to 12:00 P.M. shift. Officer Kingsbury drove the car, and claimant was his riding partner. Their tour of duty would have been completed when they reached their respective homes. About midnight they were approaching Marengo from the southeast on U. S. Route No. 20. At approximately 12:10 A.M. on April 17, about two miles southeast of the City of Marengo and about 200 feet west of Union Road in the County of McHenry, a car approached them from the northeast. The approaching car continued on its side of the road until about 25 feet from the police car, when it turned left into the opposing traffic lane and toward the police car. In attempting to avoid a collision, Mr. Kingsbury swerved the police car sharply to his left; however, the approaching car veered back (right) toward its proper lane causing the cars to collide. The right front and sides of both cars bore the brunt of the collision.

Officer Kingsbury escaped with minor lacerations and bruises; however, Officer Kays' legs were crushed when the dash, which had an auxiliary radio set attached to it, was forced back against his legs and the front seat of the car. As the result of injuries received in the accident the driver of the other car, Paul Day, Marengo, on temporary leave from military service, died while being taken to the hospital.

As the police car radio had been damaged in the accident, a passing truck driver was asked to report the accident by telephone to State Police Headquarters at Elgin. About 12:55 A.M., Dr. Robert Miller, of Marengo, and an ambulance arrived at the scene of the accident. Dr. Miller supervised Mr. Kays' removal from the car to the ambulance for transportation to St. Joseph's Hospital, Belvidere, where Drs. Miller and William M. Freeman, of Belvidere, rendered emergency care.

Mr. Kays' condition grew worse during the night, and the following morning Dr. Miller called in Dr. Maurice P. Rogers, Rockford, for consultation. During the day arrangements were made for Mr. Kays' transfer to the care of Dr. H. B. Thomas, professor emeritus of orthopedics, University of Illinois Medical College, Chicago. The move was to be made as soon as Mr. Kays' condition improved sufficiently to permit the trip by ambulance. Saturday morning, April 26, Mr. Kays was transferred by ambulance from St. Joseph's Hospital, Belvidere, to St. Luke's Hospital, Chicago, and placed under the care of Dr. Thomas.

On May 2, 1945, Dr. Thomas reported that claimant had a fracture of the distal end of the left femur with puncture wound near, injury to knee and knee joint, fracture of the distal end of the tibia and fibula with a puncture wound near, bad fracture of the right distal femur,

bad over-riding not reduced. He also had a Colles's fracture and a suspicious bruise on the head.

On September 29, 1945 claimant left St. Luke's Hospital for his home in Marengo, but thereafter made periodic trips to Chicago for treatments from Dr. Thomas, and on October 29, 1946 claimant testified that he was still taking a treatment every two weeks.

At the time of the accident claimant was 42 years of age, married, and had one child, Mary Lou, under 16 years of age dependent upon him for support at the time of his injury. Another child, Vernon William, a son, was born after the accident, August 4, 1945.

Claimant was first employed by the Division of State Police on August 18, 1943, as a police officer at a salary of $185.00 a month. He continued in the same classification and at the same salary rate through April 17, 1945, the date of his injury, and earned a total of $2,220.00 in the year preceding his injury.

At the time of the injury, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of claimant's employment.

The Division of Police made regular salary payments to claimant from the date of his injury, April 17, 1945 until April 1, 1946. July 1, 1945 his salary was increased to $213.00 a month. Salary payments paid to him during this period totaled $2,367.17.

Respondent also paid on behalf of claimant the following medical and hospital services:

Dr. Maurice P. Rogers, Rockford	$ 35.00
Dr. W. M. Freeman, Belvidere	5.00
Dr. H. B. Thomas, Chicago	963.00
St. Luke's Hospital, Chicago	2,623.60

St. Joseph's Hospital, Belvidere.	229.40
Rockford Memorial Hospital, Rockford.	10.00
Boydston Bros., Amb., Chicago..	51.50
Mrs. Otis R. Manby, R.N., Belvidere.	63.00
Mrs. Nellie Etzler, R.N., Galesburg..	14.00
Miss Hazel Troon, R.N., Elgin..	109.50
Mrs. Constance McBride, R.N., Elgin.....	77.00
Mrs. Robert Traxler, R.N., Belvidere..	14.00
A. M. Osborne (Amb.), Marengo..	10.00
	$4,205.00

and, according to the record, the charges of Dr. Thomas for the treatment of claimant since July 1, 1945, and Dr. Robert Miller's bill for initial treatment remain unpaid.

Claimant claimed that he had lost approximately 67% of the use of his right knee and 98% of the use of his left knee, and testified that Dr. Thomas so advised him. This contention is not supported by any medical testimony and, from the record, the Court is unable to determine the extent of claimant's injuries.

On January 21, 1947, Henry L. Cowlin, attorney for claimant, filed a letter in this case, reading as follows:

"Enclosed find waiver which I have signed for Vernon W. Kays.

After filing his claim in the Court of Claims, Mr. Kays filed a suit in the Circuit Court under the Tavern Liability Law, against some of the tavern keepers and obtained a good settlement and he agreed that the Court of Claims should find that he had no cause of action, as the finding in his favor in the Court of Claims would simply have meant that the State would be subrogated in the other case, and while he would get paid through the Court of Claims, the money would be deducted from the settlement that he made in the other case, so to simplify matters, it was agreed, at the time we had the hearing, that the finding should be against Mr. Kays.

This will enable him to proceed with his application for pension, which he is entitled to.

Very truly yours,

HENRY L. COWLIN."

Under Section 166, Par. 29 of Chap. 48 of the statutes, Workmen's Compensation Act, where a third per-

son's negligence caused the injury the employer is subrogated to his employees rights to the extent of the compensation paid or to be paid. *O'Brien* v. *Chicago City Ry. Co.*, 305 Ill. 244.

The record shows that claimant was paid $2,367.17 for unproductive time, and that respondent paid $4,205.00 for medical and hospital services, with some medical bills remaining unpaid. Claimant admits that he obtained a good settlement, but the record does not disclose the amount. Neither does it disclose that respondent was reimbursed for the money paid on behalf of claimant under the Workmen's Compensation Act, from the amount of settlement claimant received. To the extent of compensation, paid or to be paid, respondent is subrogated to the rights of claimant against said third person or persons whose negligence caused the accident, and if claimant received settlement from such third person or persons in excess of respondent's liability under the Workmen's Compensation Act respondent cannot maintain an action against such third person or persons but must look to claimant for reimbursement. *Chicago Surface Lines, et al.* v. *Foster,* 241 I.A. 49.

The Court is making these observations so that the Attorney General may take such further action as may be indicated by a complete record of all the facts in this case.

Counsel for claimant requests this Court to make a finding against claimant, so he can proceed with his application for pension under the State Employees Retirement System. The last paragraph of Section 10 of this Act (Chapter 127, Sec. 224, Illinois Revised Statutes for 1945) states:

"Any amounts received by a meniber under the State Workmen's Compensation or the Occupational Diseases Acts shall be applied as an

offset to any accidental disability benefit provided for herein in such manner as is provided in rules adopted by the board."

This paragraph of the Act contemplates a determination first of claims compensable under the provisions of the Workmen's Compensation Act. Otherwise the Pension Board would not know what amount to offset against any such disability benefit. The Court of Claims has jurisdiction of claims by employees against the State for personal injuries arising out of and in the course of their employment, to be determined in accordance with the substantive provisions of the Workmen's Compensation Act, and claimant properly filed his claim with this Court for judicial determination. This, the Court has been unable to do, as the record contains insufficient evidence of the extent of claimant's incapacity. Competent medical and other evidence should be introduced to show the extent of claimant's disability. The amount received by claimant from the third persons for his injuries should also be in the record, so the respondent by its right to subrogation, can set off such an amount against any award entered by this Court. Unless this is done the Pension Board cannot, under the statute, make a proper determination of any pension claim filed by claimant under said Section 10.

This Court, on its own motion, requested claimant to submit such evidence, but claimant has failed to do so. The right of respondent to subrogation arises under the Workmen's Compensation Act. If an award was denied, as requested by claimant, he would then be in a position before the Pension Board to show that an award was denied and no compensation received. The Pension Act does not contain any right to subrogation. The State, under such circumstances, could lose its rightful offset for the amounts it has already paid on account

of this accident under the provisions of the Workmen's Compensation Act and a portion or all of its remaining liability thereunder.

Accordingly the request for a finding against claimant is denied, and jurisdiction of this cause is specifically reserved for the entry of such further orders or findings as may from time to time be necessary.

The testimony on hearing before Commissioner East mas transcribed by A. M. Rothbart Court Reporting Service, who have submitted a statement of $13.80 for services. This charge is reasonable and proper.

An award is entered in favor of A. M. Rothbart Court Reporting Service for stenographic services in the amount of $13.80, which is payable forthwith.

SUPPLEMENTAL OPINION

BERGSTROM, J.

In the original opinion filed in this case at the May 1947 term there remained for determination the question of the permanent extent of claimant's injury and the amount received in settlement by claimant for the negligence of the third party tort feasors.

Claimant was severely injured and was under medical treatment and observation from the date of the accident, April 17, 1945, until June 15, 1948. On the later date Dr. R. H. Thomas, professor emeritus of orthopedics, University of Illinois Medical College, Chicago, who had charge of the patient from the time of the accident, made his final report, as follows:

"I examined Mr. Vernon Kays this morning, June 15, 1948. You remember he came to me in April 1945. He was hospitalized seven months at St. Luke's and came to the office for treatments over a period of 12 months. He had simple fractures of both femurs, middle third; both knees were crushed (the left more severely); compound fracture

of the lower left tibia; right wrist and right elbow fractured. He was intermittently unconscious for about 12 hours.

"Examination shows the result of femur fractures okay. The knees —full extension in both; only 6 degrees flexion on the left and 12 degrees flexion in right. He is not able to get out of a chair or sit down without the help of the chair arms. The right elbow is all right. Right wrist gives no pain but the grip is 15 per cent less than normal. Both knees show roughness on motion.

"His duty when injured was a policeman. He is totally disabled for that work at this time. He needs no treatment nor additional examinations.

"Prognosis: No more improvement is expected. The injured joints will age faster from now on than the normal joints will."

On December 9, 1948 claimant appeared before this Court for observation. After a careful consideration of the report of Dr. Thomas, the history of this case and what we could visually observe respecting his condition, we are of the opinion that for a man trained only for physical work he has suffered the permanent and complete loss of use of both of his legs as a result of this accident in accordance with Subparagraph 18 of Paragraph E of Section 8 of the Workmen's Compensation Act. He is, therefore, entitled to compensation as provided under Paragraph F of Section 8 of the Act. (1943 statute, as amended.)

At the time of the accident he was married and had one child under sixteen years of age. His earnings for the year previous to his injury amounted to $2,220.00. He is, therefore, entitled to an award computed under Section 7, Paragraphs A, H3 and L, in the sum of $5,228.75, from which must be deducted the sum of $2,367.17 paid to him for unproductive time, leaving a balance due him of $2,861.58. After payment of this compensation, he is also entitled to an annual pension for life, based on twelve (12) percent nf $5,228.75, or $627.45 annually, payable in monthly installments.

However, as the record now shows that claimant received $22,000.00 in settlement for the negligence of

the third party responsible for this accident, any amount due from respondent to claimant under the Workmen's Compensation Act is properly set off against this settlement amount. Section 29 of the Act provides as follows:

"Where the injury or death for which compensation is payable under this Act was not proximately caused by the negligence of the employer or his employees and was caused under circumstances creating a legal liability for damages on the part of some person other than the employer to pay damages, such other person having elected not to be bound by this Act, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act. In such case, however, if the action against such other person is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee or personal representative."

An award is therefore made to claimant, Vernon W. Kays, in the sum of $2,861.58, all of which has accrued, and in addition thereto he is awarded an annual pension for life of $627.45 commencing on June 5, 1948, payable in equal monthly installments of $52.29; provided further, however, that any payments due to claimant under this award shall be set off against the sum of $22,000.00 recovered by claimant, and that no payments shall be made on this award until the amounts due hereunder shall equal said amount of $22,000.00.

All future payments being subject to the provisions of the Workmen's Compensation Act, jurisdiction is hereby specifically reserved in this case for the entry of such further order or orders as may from time to time be necessary.

This award is subject to the approval of the Governor, as provided under Section 3 of "An Act concerning the payment of compelisation awards to State employees. ,,

(No. 4056—Claimant awarded $2,500.00.)

NARY MALLOY. Claimant. *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 24, 1949.

THOMAS J. DOWNS, JOHN D. O'CONNOR, AND MEARL G. ADAMS, Attorneys for Claimant.

HON. GEORGE F. BARRETT, Attorney General; WILLIAM J. COLOHAN, Assistant attorney General, for Respondent.

INSTITUTION *FOR* **THE** INSANE—*State's responsibility for acts of escapee from—State's liability for injuries caused by escapee from.* When an inmate escaped from an institution for the insane and injured a citizen, the doctrine of res ipsa loquitur applies in judging the respondent's performance of its duty of due care to guard, supervise and control the inmate. The respondent violated its duty of care owed in relation to the public including the claimant. On the basis of the record and under the provisions of Par. C, Section 7 of the Court of Claims Act, an award of $2,500.00 is not unreasonable to allow claimant.

RESPONDEAT SUPERIOR—*doctrine applies to State in the exercise of a governmental function.* Prior to the Act creating the present Court of Claims, the doctrine of respondeat superior did not apply to the State of Illinois in the exercise of governmental function. This rule of immunity of the State was expressly abolished by the present Act provided for in Section 8, Paragraph C thereof.

DAMRON, J.

On November 1, 1946, Miss Mary Malloy, claimant, was brutally attacked, beaten and stabbed by one, William Payne, an escapee from the Illinois Security Hospital, Menard, Illinois, an institution for the insane operated by respondent. The attack occurred about eleven o'clock in the morning when claimant was alone in her gift shop at 6846 Wentworth Avenue, Chicago, Illinois. The assailant, Payne, a stranger, had previously visited the store and made a small purchase about five or ten minutes earlier when another customer was present. At the time of his second visit he seemed to be normal and unexcited. He asked: "Just give me

two more cards''. As claimant handed him his change he suddenly grabbed her by the throat and struck her. Claimant had given Payne no reason or provocation; she acted in the exercise of due care and caution for her own safety and in a normal manner. Payne then grasped a scissors from its place on the counter. Saying he was going to kill her, he dragged claimant back of the counter and through a curtained doorway leading into the living quarters at the rear of the store. He pulled her into the bathroom, and pounding her head against the wall, stabbed her with the scissors. **A** customer entered the shop. As claimant lost consciousness, the customer, hearing the struggle and groans, gave alarm. Payne was captured soon after he fled from the store.

Claimant, unconscious and bleeding from her wounds, was taken to St. Bernard's Hospital, Chicago, Illinois, where she remained two weeks. She was under the care of Dr. Howard J. McNally, a member of the hospital staff as well as of St. Elizabeth and Mercy Hospitals in Chicago. Dr. McNally, who attended her every day, testified :

"Patient entered the hospital in shock and received anti-shock treatment in the form of two blood transfusions, morphine; and had certain wounds. There was considerable swelling of the entire left side of the face, completely closing the left eye. Swelling involved the nose, right side of the face, and also the neck area. Multiple lacerations were present on the face, neck and chest. One laceration penetrated the bony region below the ocular bulb. There was a laceration on the left side of the mouth. There was one laceration in the neck and was characterized by swelling. X-rays were taken at that time which indicated no bony penetrations of the head, neck or chest, but indicated a displacement of the trachea to the right side. Lacerations of the chest did not penetrate the chest cavity. Eye consultation was held at that time and the doctor believed that the orbit had not been penetrated, but there was considerable hemorrhage within it."

The scars shrank so as not to be noticeable or coiistitute any sort of disfigurement. Claimant, however,

suffered permanent injury to her left eye. The left eye was so torn that the nerves controlling its function of turning in different directions were severed. Thus, claimant cannot use both eyes together without seeing a double image. The evidence on behalf of claimant further shows that as a result, she must use spectacles with the left glass opaque to prevent the use of that eye. The medical, surgical and hospital expense paid by claimant as the result of her aforesaid injuries totalled $620.32. Including time in the hospital, claimant was incapacitated and away from her business about three weeks.

The complaint, as amended, alleges that on April 6, 1942, William Payne was committed to the aforesaid hospital as criminally insane after he had killed one Mrs. Amalie Fanti, a woman proprietor of a toy shop. The long criminal record of William Payne, under various aliases, is set forth from his first sentence to the Chester, Illinois, Penitentiary in 1908 for burglary and larceny. This record includes many convictions in five states on numerous charges relating to burglary, larceny, robbery, carrying concealed weapons, and murder. In 1938, William Payne was confined in the ward for the criminally insane at the State penitentiary at Anamosa, Iowa. The complaint alleges the respondent had kiiowledge or by the exercise of ordinary care could have learned of the dangerous character and criminal record of William Payne. The complaint alleges the respondent, contrary to its duty to claimant as well as the public at large with respect to the dangerous inmates, maintained and controlled the aforesaid hospital in a negligent manner in that it did or omitted to do one or more of the following:

"(A) Permitted said inmate, William Payne, his liberty without adequate guard and surveillance.

(B) Permitted said William Payne to take charge of a chicken farm away from the principal buildings and guards of the hospital.

(C) Permitted its charge, William Payne, to escape from said hospital.

(D) That the respondent failed to discover the escape of their charge, William Payne, on October 1, 1946, and that the respondent did not know of said William Payne's escape until several days after October 1, 1946."

It is further alleged that by reason of the aforesaid assault committed on the claimant, she suffered personal injuries and damages including the loss of income, medical and hospital expeiises exceeding $2,500.00.

The evidence presented by the respondent constituted the departmental report of the Department of Public Welfare dated May 11,1948, signed by Cassius Poust, director, together with the exhibits referred to in said report. In this report it is stated:

"6 (a) The management did not permit William Payne his liberty without guard or supervision. Payne was not a trusty but under supervision of a guard and within sight except for a short time occasionally when he would be working within the chicken house. The officer in charge inspected the chicken house and premises and directed the work several times daily and maintained a regular check.

"6 (b) The management did not permit William Payne his liberty without guard, surveillance and supervision as is customary under the general practice accepted in an institution of this type. The chicken house is approximately 100 yards from the principal buildings. There is no obstruction of view and it is in plain sight of the officer in charge at all times.

"October 1, 1946, patient walked away from the chicken house on this date. Was last seen at 3:30 P.M. but when supper count was made at 4:00 P.M. patient was absent. Intensive search conducted throughout the night of the 1st and during the day and night of the 2nd. Pictures and description furnished State police and police of all surrounding districts and principal towns between here and Chicago and towns south as far as Cairo.

Martin."

Prior to the Act creating the present Court of Claims in 1945, it was held the doctrine of respondeat superior did not apply to the State of Illinois in the exercise of a governmental function and that the State was not liable for injuries resulting from the malfeasance, misfeasance, or negligence of its officers, agents or employees. *Helen Turner, Admix.,* vs. *State of Illinois, 12* C.C.R. 265; *Brookshier* vs. *State of Illinois,* 14 C.C.R. 134. However, this rule of immunity of the State was expressly abolished by the present Act to the extent necessary for the exercise by the Court of the limited jurisdiction in tort cases provided for in Section 8, Paragraph C of the Act reading as follows:

"All claims against the State for damages in cases sounding in tort, in respect of which the claimants would be entitled to redress against the State of Illinois, at law or in chancery, if the State were suable, and all claims sounding in tort against the Board of Trustees of the University of Illinois; provided, that an award for damages in a case sounding in tort shall not exceed the sum of $2,500.00 to or for the benefit of any claimant. The defense that the State or the Board of Trustees of the University of Illinois is not liable for negligence of its officers, agents, and employees in the course of their employment shall not be applicable to the hearing and determination of such claims."

The first question under the evidence offered in behalf of claimant is whether the respondent owed a duty of due care in relation to the claimant. Generally, in the law of negligent liability in tort, this question is resolved by whether it would have been reasonably foreseeable to a normally prudent man in the place of the defendant that the defendant's conduct would be so careless as to constitute a probable cause of harm to the plaintiff. At 38 American Jurisprudence 656, it is stated:

"The law imposes upon every person who undertakes the performance of an act which, it is apparent, if not done carefully, will be dangerous to other persons or the property of other persons, the duty to exercise his senses and intelligence to avoid injury, and he may be held accountable at law for an injury to person or to property which

is directly attributable to a breach of such duty. The duty so arising is absolute".

and at page 661, it is stated:

"The duty to use care . . . is an indispensable element of actionable negligence, may be a duty owing to an individual by reason of his peculiar position, or it may be general and owing to everybody".

In *Jones Company* vs. *State* (1923), 122 Me. **214,** certain buildings and personal property owned by the plaintiff were destroyed by fire. The arsonist was an insane patient who had been paroled by the State. The jury, from medical testimony, found the State had been negligent and to have abused its discretion in paroling the insane arsonist, a dangerous man to be at large. The suit was authorized by a statutory provision comparable to the case at hand and expressing: "The liabilities of the parties shall be the same as the liabilities between individuals''. In its opinion the Supreme Court of Maine said (at page 125):

"Was Dr. Hedin (the superintendent) negligent in granting parole under these conditions? In other words did he fail 'to observe that degree of care which the law requires for the protection of the interests likely to be injuriously affected by the want of it?' It should not require argument or citation of legal authorities to prove the necessity and propriety of the various methods provided by law to *protect* **both** *the afflicted person and the community at large* **from** *the ill effects of insanity.* Among those methods is that of restraint by lawful commitment to a hospital provided for the custody and treatment of the insane. While the statute law provides that the superintendent of an insane hospital may permit any inmate thereof to leave such institution temporarily . . . yet reason and good sense demand that such permission should not be given if the safely and welfare of the patient, or the community at large, are to be jeopardized by such permission. And it equally follows that *the degree* **of** *care to be exercised* **on** *giving such permission should be commensurate with the particular nature* of *the patient's mental affliction and the possible* **or** *proportionate risk consequent upon has enlargement."* (Italics ours.)

Persons afflicted with highly contagious diseases, dangerous to human life, are quarantined as necessary to afford protection to the community where they are

found. In part, for the same reason, are the criminally insane kept in charge. The respondent took charge of William Payne, dangerous, criminally insane and a person likely to cause bodily harm to others if not controlled. The respondent was under a duty to exercise due care in such control so as to prevent him from causing such harm to members of the public, including the claimant. In this connection see Restatement of the Law of Torts, Section 319, and the second illustration stated thereunder.

The aforesaid duty existing, was the respondent negligent in its discharge? Respondent admits that Payne, the insane escapee, was working at a chicken house outside and at least 100 yards away from the main institutional buildings of the Illinois Security Hospital. Respondent, while generally claiming to have inspected the chicken house, to have directed the work, and to have maintained a regular check, provides no facts of the method of such inspection, direction and check whereby the adequacy of its security procedure may be measured in light of its duty of guard and supervision of Payne, dangerous and criminally insane. Respondent admits Payne, in escaping, merely walked away, further, that his ab'sence was not known until a supper count at least a half hour later.

In *Arado* vs. *Eppstein* (1944), **323** Ill. App. 194, the Court stated (at pages 199 and 200) :

"It is a very ancient and salutary principle of law, that where one has charge or management of a thing in connection with which an accident happens, which in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from a want of proper care; that in case of such an accident the duty of explanation is thrown upon those having charge of the thing, particularly when information concerning the thing itself is within the particular or peculiar knowledge **of** the defendant."

To the same effect see *Johnson* vs. *Stevens Bldg. Catering* Co. (1944), **323** Ill. App. 212, 217, where the Court adds:

"The doctrine is also based on the further consideration that where the control of the thing which has caused the injury is exclusively in the defendant it is within his power to produce evidence of the actual cause, which the plaintiff is unable to present."

The respondent had the exclusive control and management of the Illinois Security Hospital and the security measures applicable to inmate Payne. We may observe, the more dangerous the character of Payne, the more diligent is the duty and standard of care required of respondent. It is believed the doctrine of res ipsa loquitur is applicable here in judging the respondent's performance of its duty of due care in the guard and supervision of inmate Payne. Viewing the evidence in light of such doctrine it is found that it would have been reasonably foreseeable to a normally prudent management in the place of the respondent that the respondent's conduct of guard and supervision and control of inmate Payne was so careless as to constitute a probable cause of harm to the claimant. Respondent violated its duty of care owned in relation to the public, including claimant.

The injuries and damages to claimant hereinabove set forth were substantially caused by the respondent's negligence. But for the negligence the claimant would have suffered no harm. No new element contributes to her harm additional to the existing factors of the situation under which the respondent's conduct we deem was negligent. The injuries suffered by claimant could have been prevented by the duty of care which the defendant violated.

The evidence in this case was heard by Commissioner Burton H. Young, who has reported to this Court that

this claimant suffered damages to an amount exceeding $2,500.00.

On the basis of this record and under the provisions of Paragraph C, Section 7 of the Court of Claims Act, an award of $2,500.00 is not an unreasonable sum to allow claimant for damages sustained as a result of these injuries.

An award is therefore hereby entered in favor of Mary Malloy in the sum of Two Thousand Five Hundred Dollars ($2,500.00).

(No. 4079—Claimant awarded $134.85.)

IRVING S. HOCHSTADTER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion *filed February 24, 1949.*

Claimant, Pro Se.

HON. IVAN A. ELLIOTT, Attorney General; HON. ARCHIE BERNSTEIN, Assistant Attorney General, for Respondent.

MILITARY SERVICES—*claim for payment not approved before lapse of appropriation allowed.* Where a corporal in the Illinois Reserve Militia was, in error, certified as being entitled to two days pay or $8.70, whereas he was in fact entitled to thirty-three days pay or $143.55, and the delay in correcting the error until after the appropriation was lapsed was not due to any action of the claimant, the award of $134.85 was allowed.

ECKERT, C. J.

On February 5, 1947, the commanding officer, First Infantry, Illinois Reserve Militia, was allotted the sum of $5,000.00 for active duty pay for officers and enlisted men in connection with the muster-out of the First Infantry, Illinois Reserve Militia, on or before March 31, 1947. This allotment was for administration of the muster-out and the packing, shipping, and return of all mili-

tary property, except vehicles, to Springfield, Illinois. The pay for a corporal was at the rate of $4.35 per day.

Pay roll certification for personnel of the First Infantry, Illinois Reserve Militia, was submitted by the commanding officer, First Infantry, on March 21, 1947, and the name of the claimant, Corporal Irving S. Hochstadter, was certified for two days pay in the grade of corporal, being a total of $8.70. This pay roll certification was in error as to the time during which the claimant was in service. He had, in fact, been employed by Captain Maurice Lepavsky, supply officer, First Infantry, Illinois Reserve Militia, for thirty-three nights, from 6 P.M. to midnight, during the period of February 6, 1947 to March 27,1947. For this service, he was entitled to $4.35 per night, or a total of $143.55.

The claimant was diligent in the protection of his rights, and submitted a letter to the Military and Naval Department of the respondent on May 24, 1947, asking that the records be checked and that he be paid the balance due him. The Military and Naval Department thereafter spent considerable time in determining the correctness of the claim, and it was only after September 30, 1947, when the appropriation for the biennium had lapsed, that the Department discovered the error in the pay roll certification.

The elaimant has rendered services to the State on the order of an officer authorized to contract for such services, and has been diligent in seeking payment therefor. Due to no fault or negligence of the claimant, his claim was not approved and vouchered for payment before lapse of the appropriation from which it was payable. Claimant is therefore entitled to an award in the sum of $143.55, less the sum of $8.70 previously paid to him, or the sum of $134.85.

An award is therefore entered in favor of the claimant, Irving S. Hochstadter, in the amount of $134.85.

(No. 4083—Claimant awarded $297.00.)

CLIFFORD CAMP, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February *24, 1949.*

ROBERT H. MCCARTHY, Attorney for Claimant.

HON. IVAN A. ELLIOTT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award* for compensation *under* may be *made.* Where an employee sustains accidental injuries, arising out of and in the course of his employment, an award for compensation therefor may be made under the Act.

BERGSTROM, J.

Claimant, Clifford Camp, filed his complaint on April 16, 1948 for compensation under the Workmen's Compensatioii Act for an injury sustained on June 4, 1947 while employed by respondent in the Department of Public Welfare. The record consists of the complaint, departmental report, transcript of evidence, and claimant's and respondent's waiver of brief.

The evidence shows that claimant was employed as a carpenter by respondent at the Peoria State Hospital, and that on June 4, 1947 when he was cutting a piece of material for a door the saw blade hit a knot in the board and the blade jumped and severed the first joint, known as the distal joint, of the third finger on his right hand. He was given immediate treatment at the Peoria State Hospital by Dr. Trigger. He continued working during the month of June, but was laid off the 1st of July, and was unable to obtain other work because of the condition of his injured hand. His temporary total incapacity continued for a period of four weeks.

There are no jurisdictional questions presented by the record, and we find that claimant was injured by reason of an accident arising out of and in the course of his employment by respondent.

Claimant's earnings for the year preceding his injury were $3,306.64. He has one child aged fourteen years. His compensation rate would, therefore, be $18.00 per week. He is entitled to receive compensation for four weeks temporary total disability, and an award for twelve and one-half weeks for the loss of the distal phalanx of the third finger on his right hand, or a total of $297.00.

Miss Thelma Metz, Alliance Life Building, Peoria, Illinois, took and transcribed the testimony, for which she submitted her charge of $12.50, which we find is fair, reasonable and customary.

An award is made to claimant, Clifford Camp, in the sum of Two Hundred Ninety-seven Dollars ($297.00), all of which has accrued and is payable forthwith.

An award is also made to Miss Thelma Metz in the sum of Twelve and 50/100 Dollars ($12.50), payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4087—Claimant **awarded** $1,768.00.)

ORBIE LAUDERDALE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

***Opinion** filed February 24, 1949.*

ROY A. PTACIN, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and HON. C. ARTHUT NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION *Am—when award for compensation tinder may be made.* Where the employee, a stationary fireman employed in the Manteno State Hospital, sustained the loss of use of the first, second and third fingers of the left hand while laying six inch soil pipe, caused by one of the pipes falling and crushing his fingers, such work arising out of and in the course of his employment, an award for compensation therefor may be made under the Act.

ECKERT, C. J.

On January 9, 1948, the claimant, Orbie Lauderdale, a stationary fireman, was employed by the respondent at the Manteno State Hospital. While working in the basement of the power plant, laying six inch soil pipes, one of the pipes, six feet in length, fell on his left hand, crushing three fingers. Claimant was immediately taken to the employees' hospital, where his hand was treated and X-rays were taken.

At the time of the accident, the claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of claimant's employment.

Claimant's earnings for the year immediately preceding his injury were $2,977.25, making an average weekly wage of $57.25. At the time of the injury, he had one child under sixteen years of age dependent upon him for support. Claimant's compensation rate is therefore $19.50 per week. No claim is made for medical, surgical or hospital services, or for temporary disability. Claimant, however, did receive $260.00 for four weeks non-productive time, which was an overpayment of $182.00. This latter amount must be deducted from any award made in this case.

Claimant seeks an award for complete functional loss of use of his index, middle and ring fingers. Dr.

Albert C. Fields, testifying on claimant's behalf at the hearing before Commissioner Young, stated that he examined claimant on April 24, 1948. At that time he found that:

"His (claimant's) left hand, index finger, disclosed a thickening at the middle phalangeal joint. There was an absence of the original fingernail which has been replaced by a new nail which is slightly irregular in outline. The finger is held in a hyper-extended position at the distal phalangeal joint. In other words, it is tipped back a little bit. On active motion he brings his fingertips to about two and a half or three inches of the palm. Actively there is no flexion in the distal or mid joint. He is unable to spread his index and middle finger voluntarily. His middle finger is held in a deformed position; hyper-extension of the mid-phalangeal joint. There is a limitation of extension in the distal phalanx amounting to about thirty-five degrees. Actively he brings the fingertips to about two or three inches of the palm. There is no voluntary flexion in the middle or distal phalangeal joint. He also has a new nail on the finger.

"The ring finger, he brings the fingertip to within a half an inch **of** the palm and flexion is confined to the proximal and mid joint. There is no flexion in the distal phalangeal joint."

Dr. Fields stated, on the basis of this examination of claimant, including X-rays, that claimant had suffered a complete functional loss of use of his index, middle and ring fingers.

Dr. Julius Grueneberg, who is employed as a physician and surgeon at the Manteno State Hospital, testifying on behalf of the respondent, stated that he had treated claimant immediately after the accident. He had also examined the X-rays. Dr. Grueneberg completely concurred in the findings of Dr. Fields in that claimant had suffered a complete functional loss of use of the three fingers.

From this testimony, from the X-rays which form part of the record, and from the report of Commissioner Young, who personally observed claimant's fingers at the hearing, it is clear that claimant has sustained permanent and complete loss of use of his first, second and

third fingers of the left hand. For the permanent and complete loss of use of his left first finger, claimant is entitled to $19.50 per week for 40 weeks, or the sum of $780.00. For the permanent and complete loss of use of his left second finger, claimant is entitled to $19.50 per week for 35 weeks, or the sum of $682.50. For the permanent and complete loss of use of his left third finger, claimant is entitled to $19.50 per week for 25 weeks, or the sum of $487.50.

A. M. Rothbart of Chicago, Illinois, was employed to take and transcribe the evidence at the hearing before Commissioner Young. Charges in the amount of $35.50 were incurred for these services, which charges are fair, reasonable and customary.

An award is therefore entered in favor of A. M. Rothbart in the amount of $35.50, which is payable forthwith.

An award is also entered in favor of the claimant, Orbie Lauderdale, in the aggregate amount of $1,950.00, from which must be deducted the excessive payment for non-productive time in the amount of $182.00, leaving a balance of $1,768.00, payable to him as follows:

$1,131.00, which has accrued, is payable forthwith;
637.00 is payable in weekly installments of $19.50 per week, beginning February 25, 1949, for a period of 32 weeks, with an additional final payment of $13.00.

This award is subject to the approval of the Governor as is provided in Section 3 of "An Act concerning the payment of workmen's compensation to State employees."

(No. 4113—Claimant awarded $2,093.46.)

CARLO J. LUBERTOZZI, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 24, 1949.

FRANK MARTOCCIO, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General; HON. WILLIAM J. COLOHAN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—when *an award for compensation under may be made.* Where an employee employed as bricklayer by the Department of Public Welfare at the Chicago State Hospital sustains accidental injuries arising out of and in the course of his employment, by falling from a scaffold and sustaining 50% permanent injury in consequence thereof, an award for compensation therefor may be made under the Act.

DAMRON, J.

The claimant, Carlo J. Lubertozzi, filed his complaint herein on August 24, 1948 alleging that on August 25, 1947 he was injured by reason of an accident arising out of and in the course of his employment by respondent.

The cause was heard before Commissioner Blumenthal on November 30, 1948, and transcript filed on January 13, 1949. No jurisdictional questions were raised.

The claimant testified that on August 25, 1947 he was a temporary employee, as a bricklayer by the Department of Public Welfare at the Chicago State Hospital. While restoring a wall in one of the buildings, he stepped down from his scaffold, tripped over some rubble on the floor and fell to the concrete floor alongside a ditch. He limped around for awhile and thought "it would go away", but when he got worse the next day, he talked to Mr. John Wright, the chief engineer, and the latter directed him to Dr. Louis Olsman. Dr. Olsman gave him a prescription and instructed him to take hot baths, but the following morning he was unable

to get up and go to work. He did not report back to work until two weeks had elapsed. Dr. Olsman sent him for X-rays and prescribed diathermy treatments. He was later sent to the Illinois Research Hospital under the care of Dr. Phillips. While under this treatment for a period of about two weeks he was on light duty. At present, he is working, but his leg falls asleep; is numb and feels alternately cold and hot. In performing his work he "feels" his back when he has to stoop too much. Prior to the accident, he never had any trouble with his back or leg.

While still under treatment by Dr. Phillips, he was discharged by respondent, but about a week later, he obtained employment and is earning $2.75 per hour or $110.00 for a forty hour week.

Dr. Louis Olsman, surgeon employed at the Chicago State Hospital, testified that he first saw claimant on September 4, 1947 and was given a history of having been injured several days previously by falling in a ditch. The impression, following an X-ray was a right sacroiliac strain. Subsequently, diathermy was instituted as a daily treatment for several weeks. When claimant's symptom of pain continued, he was referred to the University of Illinois Hospital and examined in the orthopedic and neurology clinics in both of which a diagnosis was made of a herniated inter-vertebral disc of the fifth lumbar and first sacral vertebra. The X-rays taken at the Chicago State Hospital and sent to the University of Illinois Hospital were produced and in the opinion of the witness corroborated the findings.

Dr. S. I. Weiner was called on behalf of claimant. He specialized in orthopedics and traumatic surgery and testified as to his qualifications in this field. He examined claimant on November 27, 1948 and took

X-rays. The clinical examination disclosed oblique flexion restricted to the right tendon Achille's para-vertebrae. The reflex was absent and there was also a decrease in the right patella reflex on the right side. The pathology of the X-rays was interpreted as being consistent with a finding of a displaced inter-vertebrae disc. His diagnosis was a dislocation of the nucleous polyposis on the right side of the lumbar spine between the fourth and fifth lumbar vertebrae. The effect of this is to produce pain and disability of the extremity; pain in the lower back aggravated by coughing and sneezing and referred down the right leg. In his opinion there was an approximate 75% permanent loss of use of the right leg. The disability arises from the origin of motor and sensory nerves which supply and control the extremity. The condition will not improve and may get worse if the displacement takes place towards the spinal canal instead of laterally as at present. Dr. Olsman recalled as a witness testified that in his opinion an injury such as that described would result in a disability of about 50%.

The evidence of Dr. Olsman indicates that claimant was in error in stating that he reported to Mr. Wright on August 25th, the day following the accident and that he was examined by Dr. Olsman on the same day. On cross-examination claimant was vague and not certain as to dates but in view of the other indisputable evidence in the record the conflict of the testimony in this respect is not of itself significant or essential to the merits of the case.

The evidence, and particularly respondent's own witness, Dr. Olsman, leaves no doubt that claimant has sustained a permanent partial loss of use of his right leg to the extent of not less than 50%.

It was stipulated that claimant was employed at a rate of $382.00 per month and that when the accident was sustained he had three children under sixteen years of age.

Claimant testified he did not report for work for two weeks during which time he was paid his full wage, $88.17 per week, or $176.34. His compensation rate would be the maximum of $19.50 increased to $23.40 by reason of his three children under sixteen years.

For a 50% permanent, partial loss of his right leg, claimant is entitled to ninety-five weeks at $23.40 or $2,223.00. From this $129.54 must be deducted, being the excess payment for non-productive time, or the difference between $176.34, his wage for two weeks, and the $46.80 to which he was entitled for temporary total disability compensation.

This entitled claimant to a new award of $2,093.46, of which seventy-six weeks has accrued.

An award is hereby entered in favor of claimant, Carlo J. Lubertozzi, in the sum of Two Thousand Ninety-three Dollars and Forty-six Cents ($2,093.46). Of this award the sum of $1,778.40 representing 76 weeks has accrued as of February 9, 1949, which is payable to claimant in a lump sum. The remainder of said award amounting to the sum of Three Hundred Fifteen Dollars and Six Cents ($315.06) is payable to claimant at $23.40 per week for 13 weeks, with an additional final payment of $10.86.

A. M. Rothbart was employed to take down and transcribe the testimony in support of this claim, for which he made a charge of $53.60. We find this charge to be fair, reasonable, and customary for the services rendered.

An award is therefore hereby entered in favor of

A. M. Rothbart in the sum of Fifty-three Dollars and Sixty Cents ($53.60).

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3925—Claimant awarded $1,997.29.)

COACH CORPORATION OF FREEPORT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed Mwrch 24, 1949.

POPPENHUSEN, JOHNSTON, THOMPSON & RAYMOND (EARL C. WILLIAMS and HENRY J. BRANDT, of Counsel), Attorneys for Claimant.

HON. IVAN A. ELLIOTT, Attorney General, and WILLIAM J. COLOHAN, Assistant Attorney General, for Respondent.

MISAPPROPRIATION OF SECURITIES—*State liability for bonds deposited as security pursuant to provisions of Workmen's Compensation Act.* Where the chief security examiner of the Industrial Commission misappropriated U. S. Treasury Bonds which the claimant deposited pursuant to the provisions of the Workmen's Compensation Act, the State is liable for the amount of the loss to the claimant in the principal due on such bonds and an award was made accordingly.

SAME—*State not liable far the interest due on misappropriation bonds.* The State is not liable for the payment of interest in the absence of a statute subjecting it to such liability and in this State there is no such statute.

DAMRON, J.

Claimant, Coach Corporation of Preeport, an Illinois corporation, seeks reimbursement for a loss it sustained by reason of the misappropriation by the chief security examiner of the Industrial Commission of Illinois of certain U. S. Treasury Bonds which claimant deposited pursuant to the provisions of the Workmen's Compensation Law.

The essential facts of record as resolved by the department report and stipulation of the parties are as follows :

On April 22, 1941, claimant deposited five $1,000.00 negotiable U. S. Treasury Bonds bearing 2½% interest, with the Industrial Commission pursuant to a certain deposit agreement of that date executed on behalf of the commission by its then chief security examiner, Lawrence J. O'Connell. Under the terms of the agreement the bonds were to be held by the Industrial Commission as a guarantee for the payment of any judgment entered against the depositor for any sums found to be due its employees under the Workmen's Compensation Law; the bonds mere to be surrendered upon certification that no such payments were due and the interest on these bonds was to be paid to the depositor as it became due.

On April 28, 1941, the said Lawrence J. O'Connell converted two of the bonds by depositing them with the Continental Illinois National Bank and Trust Company of Chicago as security for a personal loan in the sum of $1,600.00. Upon default the bank sold the bonds and the balance in said account after the bank had satisfied its indebtedness amounting to $483.40 was recovered in garnishment proceedings by claimant on October 30, 1944, on order of the Superior Court of Cook County in Cause No. 44 S 12579.

On August 1, 1941, O'Connell converted two additional bonds by delivering them as security for a personal loan of $1,800.00 with the Merchandise National Bank of Chicago. The balance of $303.19 from the proceeds of a sale by the bank to satisfy its indebtedness was recovered on October 30, 1944 by claimant in the same garnishment proceedings.

On October 14, 1941, O'Connell similarly converted

the last $1,000 bond by depositing it with North Shore National Bank of Chicago as collateral security for an $800.00 personal loan. The sum of $248.03 remaining after the bank had sold this bond to satisfy its indebtedness was recovered in the aforementioned garnishment proceedings.

Claimant, on November 26, 1948, recovered the additional sum of $1,968.09 representing its aliquot share in the bond obligation of Fidelity & Deposit Company of Maryland, surety for O'Connell in the case of "Montgomery Ward & Company, Inc., vs. Fidelity & Deposit Company in the U. S. District Court, Northern District of Illinois, Eastern Division."

On the basis of the above admitted facts, claimant seeks an award of $1,997.29 of bond principal and in addition thereto it seeks interest at the rate of 2½% on these bonds as it accrued from March 31,1941.

In J. Roy *Browning* vs. *State,* 16 C.C.R. 67, a claim based on facts very similar to the one at bar was before us; we held there that the deposit of money by claimant with the Industrial Commission was an involuntary transaction required by the law of Illinois before claimant could do business in this State. We further held the Industrial Commission was authorized by law to enter into a contract such as the one introduced in evidence in this case and claimant there was granted an award for the deposit it had made with the Industrial Commission. *Leopold Cohen Iron.* Co. vs. *State,* 16 C.C.R. 162.

Here we find claimant deposited $5,000.00 in U. S. Treasury Bonds with the Industrial Commission and that due to the action of the chief security examiner of the Industrial Commission, the respondent was unable to deliver to the claimant these bonds. The record discloses that this claimant eventually recovered $3,002.71 from

the bonds for which the respondent must be given credit.

The claim for interest must be denied. The State is not liable for the payment of interest in the absence of a statute subjecting it to such liability and in this State there is no such statute. *U. S. Industrial Alcohol Company* vs. *State,* 12 C.C.R. 326; *Southern Kraft Corporation* vs. *State,* 9 C.C.R. 306; *Phillips Petroleum* vs. *State, 8* C.C.R. 198; *Phillips Petroleum* vs. *State,* 10 C.C.R. 319.

An award is hereby entered in favor of claimant, Coach Corporation of Freeport, in the sum of One Thousand Nine Hundred ,Ninety-seven Dollars and Twenty-nine Cents ($1,997.29).

(No. 4100—Claimant awarded $4,800.00.)

FLO MCINTYRE, Claimant, *us.* STATE OF ILLINOIS. Respondent.

Opanion filed March 24, 1949.

Petition of *Respondent* ***for*** *Rehearing denied May* ***12,*** *1949.*

PAULSON, MORGAN & JORDAN, Attorneys for Claimant.

HON. IVAN A. ELLIOTT, Attorney General, and ARCHIE I. BERNSTEIN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award* ***for*** *compensation under may* ***be*** *made.* Where an attendant employed at the Elgin State Hospital in the Department of Public Welfare slipped on a waxed floor, fell and broke her hip, and was permanently totally disabled in consequence thereof, and such injuries arose out of and in the course of her employment, an award for compensation therefor may be made in accordance with the provisions of the Act.

BERGSTROM, J.

Claimant, Flo McIntyre, was employed on May 9, 1947 as an attendant by respondent at the Elgin State Hospital in the Department of Public Welfare. On that day, while hurrying on an errand in the course of her duties, she slipped on a waxed floor, fell, and broke her

hip. Claimant, 53 years of age, was immediately taken to the hospital. Her injury caused intense pain, requiring administration of morphine every two hours.

No jurisdictional question is raised by tlie record. Respondent aiid claimant were operating under the Workmen's Compensatioii Act, and the accident in question arose out of and in the course of the employment.

Respondent furnished complete surgical, medical and hospital treatment. The only question is the extent of permanent disability of claimant and the extent of the permanent and partial loss of use of claimant's left leg.

Dr. Paul Tobin, physician and surgeon, of Elgin, Illinois, was brought into the case as an orthopedic consultant by the doctors of the Elgin State Hospital where claimant received all her medical treatment. He examined claimant within forty-eight hours after her injury. He testified that at the time of his initial examination the X-rays of claimant revealed a high fracture of the neck of tlie left femur, commonly called an intracapsular fracture. This fracture was explained as being in the upper part of the thigh bone which is offset and supports the head of the thigh bone which, in turn, fits into the pelvis which supports the body. Dr. Tobin said this injury is generally caused by a fall. He described claimant as unable to stand or bear weight. She suffered pain on motion of her left leg.

Surgery was performed by Dr. Tobin on May 19, 1947, and the fracture was reduced. Dr. Tobin was assisted by Dr. Hudell of the staff of the Elgin State Hospital. Claimant then wore a plaster cast for a week, following which she mas permitted to get up on crutches without weight bearing. She left the hospital on crutches on July 21, 1947, and was incapacitated for about six months following the injury. Repeated checks by X-ray

indicated the fracture mended well. Claimant returned to work December 15, 1947. However, on February 19, 1948 she re-entered the hospital, complaining of pain in her knee and hip. On March 4, 1948 claimant underwent another operatioii to remove the Smith-Peterson nail which had been inserted at the time of her first operation to hold the bone in place and alignment to promote calcification and bony union. It was believed that possibly the presence of the nail was causing her trouble and the recurrence of pain. Sometime thereafter, further X-rays were taken, as claimant continued to suffer pain. It was found from the X-rays that, although the fracture itself had healed, claimant was developing an asceptic necrosis of the head of the femur. Dr. Tobin explained this condition meant the bone was dying without presence of infection. He stated the cause was that the neck fracture shut off the blood flow circulation to the head of the femur, a common development of such type of fracture. Such condition was described as productive of immediate pain in the knee and hip upon standing or walking, making it very difficult for the patient to bear weight on the leg.

Dr. Tobin expressed his opinion that claimant could no longer carry on any work except with the aid of a crutch and could not perform any work that would entail being on her feet. He said she could not return to her former employment as cook or attendant. Dr. Tobin stated claimant was suffering 100 per cent general disability for any working purposes requiring her to stand or bear weight on her leg and 50 per cent partial permanent disability regarding use of her left leg. He told that the condition of necrosis would get worse instead of better. He related, however, a possible non-operative treatment whereby the patient is put to bed for four or

five months and then put in a walking caliper, a splint to prevent weight bearing by shifting weight to the pelvis. He added that sometimes after wearing the splint for about a year and a half the head of the femur becomes revascularized. Dr. Tobin estimated the medical, surgical and hospital expense of such course of treatment would approximate $1,000.00.

Dr. John C. Hudell, physician and surgeon on the staff of the Elgin State Hospital, gave claimant medical treatment in conjunction with Dr. Tobin. He completely corroborated and substantiated the testimony of Dr. Tobin in connection with the case history, treatment and extent of claimant's injuries. Dr. Hudell mentioned the Elgin State Hospital had frequently called on Dr. Tobin to assist as a consultant. Dr. Hudell declared of his own knowledge, being at the hospital at the time, that claimant was injured while in the course of her employment.

Claimant attempted to return to work during June, 1948, following her second operation. However, she had to stop immediately. She had to have her leg dressed at the hospital; her temperature had risen to 101 degrees. She has not worked since because of the pain and suffering in her hip and leg. She testified she presently suffers pain even while sitting down.

The only evidence in the record concerning the extent of disability of claimant and extent of the permanent and partial loss of the use of her left leg is that furnished by Drs. Tobin and Hudell, both employed by respondent. The Court concurs in their findings. Claimant, by reason of her injury, has been rendered completely disabled, and is wholly and permanently incapable of working.

Claimant was employed at the rate of $120.00 per month, $1,440.00 per annum, at the time of her injury;

this represents $27.69 per week. Therefore, claimant's weekly rate of compensation would be $13.84, increased 20% as by statute provided, or $16.61, the accident having occurred after July 1, 1945 and before July 1, 1947. Claimant is entitled to an award computed under Section 8, Paragraph (f) and Section 7 Paragraphs (a and k) of the Workmen's Compensation Act, of $4,800.00 for her complete and permanent disability, payable at the rate of $16.61 per week from May 10, 1947 until the said sum has been fully paid; and, after the payment of said sum of $4,800.00, an annual pension of $384.00 payable in monthly installments of $32.00.

Helen Wehrle took and transcribed the testimony and evidence, for which service she submitted her charge in the sum of $30.00, which sum we find fair and reasonable.

An award is therefore entered in favor of claimant, Flo McIntyre, in the sum of $4,800.00, payable as follows:

$1,627.78 which has accrued, is payable forthwith;

$3,172.22 to be paid in weekly installments of $16.61 beginning April 2, 1949 for a period of 190 weeks, with a final payment of $16.32; thereafter a pension for life in the sum of $384.00 annually, payable in monthly installments of $32.00.

An award is also made in favor of Helen Wehrle for stenographic services in the amount of $30.00, which is payable forthwith.

Jurisdiction is specifically reserved in this cause for the entry of such further order or orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4114—Claimant awarded $497.25.)

LADD SMITH, Claimant. *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 24, 1949.

ROY A. PTACIN, Attorney for Claimant.

HON. IVAN A. ELLIOTT, Attorney General; ARCHIE I. BERNSTEIN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award for* ***compensation*** *under may* ***be*** *made.* Where **a** ward attendant while employed at the Chicago State Hospital, sustained accidental injuries to his hand due to door slamming thereon, such injuries arising out of and in the course of his employment, an award for compensation therefor may be made under the Act.

DAMRON, J.

This complaint was filed August 30, 1948, seeking an award under the Workmen's Compensation Act for partial disability and loss of use of claimant's right hand by reason of injuries alleged lo have been sustained in an accident on June 27, 1948.

Claimant, Ladd Smith, had prior to the accident been employed for two months as a ward attendant **of** the Chicago State Hospital by the Department of Public Welfare. His rate of pay was $135.00 per month. It is alleged the accident arose out of aiid in the course of such employment. Respondent contested this allegation because of certain time entries in the regular hospital record books apparently contradicting the injuries as received in line of duty. Respondent contended that the accident occurred at 2:30 P.M., fifteen minutes before the claimant reported for work. Inspection of the original book of record showed this time entry, which might have been interpreted as "2:30", to have been written over. At the second of two extended hearings, respondent's supervisor of attendants at the Chicago State Hospital testified that he had originally entered such time

as ''5:30'' confusing it with the time claimant was first given medical attention at the hospital for his injury. He added that realizing his error, he immediately wrote over the numeral ''5'' to change it to the numeral ''3''. This writing over caused the time to appear as either ''2:30'', ''3:30'', or ''5:30''. The supervisor's testimony in conjunction with other testimony establishes Ladd Smith was injured at 3:30 P.M., a time when he was in the course of employment by the respondent. Further conflict in the hospital records relates to the day of the injury, whether on Saturday, June 26th, or Sunday, June 27th. It is believed such confusion stems from a mislaid injury report required by rules of the hospital to be accomplished by employees within 24 hours after occurrence of injury. From the record such injury report had been made out on Sunday, June 27th and given to a patient whose duty was to transmit same to the supervisor's office. The greater weight of the evidence shows claimant to have been on duty at 3:30 P.M. on June 27, 1948 in Ward c-10 of the Chicago State Hospital. Working with him was charge attendant, Kenneth E. Long, now employed by the Illinois Tool Works, Elgin, Illinois, who so testified. At that time the ward doorbell rang and claimant went to the ward door to admit entering patients. As he was so engaged and counting the patients he stepped back inside the door to converse with Mr. Long, who was working on reports in the ward office a few feet away. Actuated by wind or draft, the door slammed shut on claimant's right hand held on the door facing or jam.

Due to injury to the fourth metacarpal of claimant's right hand, the knuckle is displaced to the degree that when making a fist the ring finger only closes to a point about a quarter of an inch from the palm of the hand.

The medical testimony of Dr. Albert C. Fields, called on behalf of the claimant, and Dr. Louis Olsman, called on behalf of the respondent, is in substantial agreement except as to the extent of permanent disability caused by the injury. Commissioner Young heard the testimony and personally observed and examined the condition of claimant's right hand. It is the finding of the commissioner that claimant has sustained a permanent and partial loss of use of his right hand to the extent of 15%, and we adopt his recommendation as a basis of this award. The proof offered at the hearings in this cause does not justify this Court in allowing temporary total compensation payments, therefore that portion of the claim is hereby denied.

Claimant had not been employed for one year next preceding his injury; however, employees in his classification at said hospital earned $1,620.00 per annum. His average weekly wage therefore would be $31.73, making his weekly compensation rate amount to the sum of $19.50. If claimant had lost the complete use of his right hand, he would have been entitled to receive, under the Workmen's Compensation Act as amended, the sum of $19.50 for 175 weeks. Having lost 15% of the functional use of this hand, claimant is entitled to 25½ weeks at his compensation rate, making the sum of $497.25. *O'Dorman* vs. *State of Illinois,* 16 C.C.R. 277.

An award is therefore hereby entered in favor of Ladd Smith in the sum of Four Hundred Ninety-seven Dollars and Twenty-five Cents ($497.25) representing 15% functional loss of use of his right hand as provided under Section 8 (e) of the Workmen's Compensation Act as amended, all of which has accrued and is payable forthwith.

LaSalle Street, Chicago, Illinois, was employed to take and transcribe the evidence in this case and has rendered a bill of Ninety-three Dollars and Thirty Cents ($93.30). The Court finds that the amount charged was fair, reasonable, and customary and said claim is therefore allowed.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees''.

(No. 4122—Claim denied.)

KATHRYN E. CARLON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed **March** *24, 1949.*

Petition of *Claimant for Rehearing denied June* **17,** *1949.*

HERBERT J. DEANY AND MISS ANNE G. CARTER, Attorneys for Claimant.

HON. IVAN A. ELLIOTT, Attorney General, and HON. WILLIAM J. COLOHAN and HON. JAMES C. MURRAY, Assistant Attorneys General, for Respondent.

SIDEWALKS CONTROLLED BY PARK DISTRICTS—DEFECTS IN—*State not liable for accidents caused by.* Where the claimant stumbled and fell, sustaining serious injuries, on a sidewalk which was allegedly in **a** broken and unsafe condition, said sidewalk being owned, operated and controlled by the Chicago Park District, the State is not liable for such injuries.

SAME—*same—same.* The State of Illinois is precluded from assuming liability for a claim against such a municipal corporation under Article **IV,** Section 20 of the Constitution of 1870.

JURISDICTION— The *Court* of *Claims has no jurisdiction to heal- and, determine such claims.* The Court of Claims Act of **1945** (Chap. 37, Par. 439.8, Illinois Revised Statutes, 1945) does not extend the jurisdiction of this Court to include suits against municipal corporations.

ECKERT, C. J.

The claimant, Kathryn E. Carlon, on October 6, 1948, filed her complaint in this cause alleging that on October

8, 1946, the City of Chicago, a municipal corporation, had within its corporate limits in Cook County, Illinois, possession, supervision and control of the north sidewalk of East 57th Street in front of a store building known and designated as number **1544** East 57th Street, Chicago, Illinois; that the respondent, through its agency, the Chicago Park District, in conjunction with the City of Chicago, or otherwise, exercised some control, the exact nature of which was unknown to claimant, over the public sidewalk at that location; that it was the duty of the respondent to exercise ordinary care to keep this sidewalk in a reasonably safe condition; that respondent negligently permitted this sidewalk to become and remain in a broken and unsafe condition; that because of the negligence of the respondent, aiid while claimant was in the exercise of due care €or her own safety, and while she was walking as a pedestrian upon this sidewalk, she unavoidably stumbled and fell, sustainiiig serious injuries. She seeks damages in the amount of $2,500.00.

From the public records which claimant introduced at the hearing before Commissioner Blumenthal, it appears conclusively that the Chicago Park District has the ownership, possession, operation and control of the sidewalk in question. In addition to these public records, considerable evidence was offered by claimant describing the condition of the sidewalk, her fall, and the ensuing injuries. Since the controlling question is legal, rather than factual, it is not necessary to detail this evidence.

The Chicago Park District is a municipal corporation with power to sue aiid to be sued. The cause of action in this case is based upon its alleged negligence. The State of Illinois is precluded from assuming liability for a claim against such a municipal corporation. Article IV, Section 20 of the Constitution of 1870, provides :

"The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner, give, loan or extend its credit to or in aid of any public or other corporation, association or individual."

Claimant's theory that municipal corporations and other governmental entities are such agencies and arms of the State, that the State is responsible for claims against them, has been presented to this Court upon many occasions. The Court, however, has consistently held that it has no jurisdiction to hear and determine such claims, and that the State has no responsibility for the debts or liabilities of such bodies. *Jones* vs. *State*, 10 C.C.R. 104; *Monaco et al.* vs. *State*, 9 C.C.R. 90; *Price* vs. *State*, *8* C.C.R. 85.

The Court of Claims Act of 1945 (Chap. 37, Par. 439.8, Illinois Revised Statutes, 1945) does not extend the jurisdiction of this Court to include suits against municipal corporations. *Smith* vs. *State*, 16 C.C.R. *208.*

The case of *LePitre* vs. *Chicago Park District*, **374** Ill. 184, upon which claimant relies, in no may sustains claimant's allegation that the Chicago Park District is an agency of the State. In that case, the Supreme Court held that although park districts are municipal corporations, the powers given the commissioners of the Chicago Park District to construct and maintain drives, and to have general control and management of parks, are in the interests of establishing and maintaining a park for public use, and not in the promotion of purely corporate purposes. The Court held that in the creation and maintenance of the Outer Drive, in the City of Chicago, through Grant and Burnham parks, the commissioners mere rendering a governmental service, and as such were not liable for negligence. The trial court's decision was based upon the rule which exempts municipalities from liability from the negligent acts of its servants when

the negligent acts complained of arise out of the performance of a duty the municipality owes to the public. The Supreme Court stated: "The propriety of the application of such rule to the facts is the principal question presented on this appeal". And the Court found the rule applicable. There is nothing in that decision which in any way conflicts with the decision in *Smith* vs. *State, supra.*

Claimant contends that "no logical basis exists for extending the protection of the Court of Claims Act to claims against the State for the negligent acts of its agents in maintaining State highways beyond corporate limits in reasonably proper and safe condition for travel, and denying the same to claimants injured on similar highways which fall within the jurisdiction of agencies designated by the State to perform such governmental functions". Such a construction of the Act, claimant believes, is an arbitrary classification subject to attack on constitutional grounds. The Appellate Court of Illinois, however, in a case cited by claimant (*Griffin* vs. *City of Chicago,* 317 Ill. App. **368,** 369), stated:

"The Supreme Court in *LeFitre* v. *Chicago Park* **Distract,** 374 Ill. **184,** decided that maintenance of park boulevards is a governmental function, for negligent performance of which no liability attaches to the district. Ashland Boulevard is part of the park system, its sidewalks are part of the boulevard (*City* of **Chaougo** v. *O'Brien,* 111 Ill. 532), and it follows, their maintenance is a governmental function, for the negligent performance of which the district is not liable. This conclusion admits difficulty, for had plaintiff suffered a like injury just around the corner on Madison Street, she would have avoided the rule, but so would LeFitre had he turned from the Outer Drive on to a city street and been injured there. The difference is the creation or organization of the district and its predecessors does not affect the rule. The people of Chicago accepted the State's offer to delegate this governmental function and thereby accepted the principle that any damage from negligence in performance of the function is outweighed by the general good. We are bound to hold that Ashland Boulevard sidewalks are primarily for pedestrians walking from park to park in pursuit of health and recreation. To decide that maintenance of the boulevard is

a governmental function and of its sidewalks a proprietary function would aggravate the difficulty."

Likewise, had the claimant in this case suffered an injury on a city street, or a State highway, she would have avoided the rule. But the fact that she cannot recover against the Chicago Park District, because in the maintenance of this sidewalk it is performing a governmental function, does not give her a cause of action against the State of Illinois.

An award is therefore denied.

(No. 4123—Claimant awarded **$300.65.**)

BEULAH EVANS, Claimant. *vs.* STATE OF ILLINOIS, Respondent.

Opinion *filed March 24, 1949.*

MRS. BEULAH EVANS, Pro Se.

HON. IVAN A. ELLIOTT, Attorney General, and ARCHIE BERNSTEIN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* award *for* compensation under may *he made.* Where employee, working as visitor under the direction of the Superintendent of Marshall County, Department of Public Assistance, used her car for the purpose of her employment, and lost control **of** same due to ice on highway, the car overturning and the claimant sustaining injuries in consequence thereof, the claimant is entitled to reimbursement for doctor and hospital expense, and an award for the use of such doctor and such hospital was made accordingly, to be paid out of fund available to the Illinois Public Aid Commission for such purposes in accordance with Chapter 127, Sec. 181 A, Illinois Revised Statutes **(1947).** No claim was made for disability.

BERGSTROM, **J.**

Claimant, Beulah Evans, filed her complaint October 8, 1948 for reimbursement of medical expenses incurred by reason of an accident which she sustained on February 3,1948 in the course of her employment by respondent in the Department of Illinois Public Aid Commission, Division of Standards and Services.

The record consists of the Complaint, Departmental Report, Transcript of Evidence, and Stipulation by Claimant and Respondent waiving briefs.

Claimant was employed in the capacity of Visitor, working under the direction of the Superintendent of the Marshall County Department of Public Assistance, Lacon, Illinois, of the Illinois Public Aid Commission. As such Visitor she investigated the need and eligibiiity of applicants for Old Age Pension, Aid to Dependent Children, and Blind Assistance. She also determined budgetary allowances in conformity with the rules and regulations of the Illinois Public Aid Commission. The discharge of these duties necessarily required claimant to use her personal automobile in traveling from Lacon on visits to applicants and recipients of public assistance programs residing in her assigned territory.

On February 3, 1948, at about 4:15 P. M. claimant, in the performance of her duties, was traveling in her automobile from Henry, Illinois, to her headquarters in Lacon. At a point about five miles north of Lacon, on State Route No. 29 Detour, she lost control of her car due to ice on the highway. At the time, she was driving with due care, about thirty miles per hour. The car skidded on the icy pavement, turned around twice and struck the embankment. As a result of the impact claimant was thrown against the dashboard and windshield. Shortly thereafter, a couple in another car stopped upon discovering claimant's automobile in the ditch, and found claimant out of her car lying on the fender in a dazed condition. Claimant was taken home. She went to the hospital the next day upon advice of her physician. Her injuries consisted of fractures of the third, fourth, fifth, sixth and seventh ribs on her right side; hernothothorax; contusion of back, and mild concussion of the brain. She

returned to employment on March 29, 1948, and was released from medical care on May 13, 1948. From the bills in the record claimant's medical, doctor and hospital expenses totaled $300.65. The departmental report admits that claimant is entitled to reimbursement for her doctor and hospital expense. We concur in this view. No claim is made for disability. The record shows that full salary was paid to the claimant during the time she was incapacitated.

There is no jurisdictional question presented by the record, and we find that claimant was injured by reason of an accident arising out of and in the course of her employment by respondent.

A. M. Rothbart, 120 South LaSalle Street, Chicago, Illinois, was employed to take and transcribe the testimony in this case and submitted his invoice in the sum of $14.90, which we find to be fair and reasonable.

An award is therefore made to claimant, Beulah Evans, in the sum of $300.65, $75.00 of which is for the use and benefit of Dr. Ernest C. Burhans, Peoria, Illinois; $30.50 for the use and benefit of Dr. Royal L. Eddington, Lacon, Illinois; and $195.15 for the use and benefit of John C. Proctor Hospital, Peoria, Illinois.

An award is also entered in favor of A. M. Rothbart in the sum of $14.90.

It is further ordered that the payment of the above awards shall be made out of any funds available to the Illinois Public Aid Commission for such purposes in accordance with Chapter 127, Sec. 181A, Illinois Revised Statutes (1947).

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4128—Claim denied.)

HAZEL RAMSEY, WIDOW OF ROBERT RAMSEP, DECEASED, Claimant, *vs.* **STATE** OF ILLINOIS, Respondent.

Opanion filed March 24, 1949.

R. W. HARRIS, Attorney for Claimant.

HON. **IVAN** A. ELLIOTT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

OCCUPATIONAL DISEASES ACT—*what is insufficient to permit recovery under.* Where it was claimed that a guard, employed at the Illinois Security Hospital at Menard, Illinois, contracted tuberculosis by coming in contact with three inmates suffering from the disease, while in the performance of his duties and died as the result thereof. It was held that general or ordinary negligence is not sufficient to permit recovery under Section 3 of the present Occupational Diseases Act.

SAME—*what is necessary to establish neglzgence within the meaning of Section. 3 of.* To establish negligence within the meaning of this section, claimant must show respondent violated (1), a rule or rules of the Industrial Commission made pursuant to the Health and Safety Act, or (2) violated a statute of this State intended for the protection of the health of employees.

BERGSTROM, J.

Claimant, Hazel Ramsey, filed her claim on October 27, 1948 for damages under the Workmen's Occupational Diseases Act for the death of her husband, Robert Ramsey, from tuberculosis, which she alleges he contracted while employed as a guard by respondent at the Illinois Security Hospital at Menard, Illinois.

The claimant alleges that her deceased husband was employed in Wards C-2, C-3 and C-4 at the said Illinois Security Hospital from July 17, 1947 to November 19, 1947; that he came in contact with three inmates suffering from the disease of tuberculosis while in the performance of his duties; that he was not provided with any special gown or mask, or any kind of covering for his mouth and nose, and that the ventilation in said Ward

C-4 was poor and the air was foul. The departmental report denies that the ventilation in Ward C-4 was poor, that the air was foul, and further states that as soon as it was determined that patients were afflicted with tuberculosis they were immediately moved to the tuberculosis ward, and that Officer Ramsey was only very occasionally in close contact with anyone suffering from tuberculosis.

The pertinent facts brought out by the evidence in this case was the testimony of Dr. George H. Vernon, who established the fact that claimant's husband died of pulmonary tuberculosis at the Palmer Sanitarium on December 29, 1947. The testimony of claimant, Mrs. Hazel Ramsey, was that her husband was 54 years old, and was in good health on July 17, 1947 at the time he commenced work at the Illinois Security Hospital; that previous to this employment he worked for twenty years as a policeman on the Marion police force; that, to her knowledge, he never had tuberculosis prior to his employment by respondent. These pertinent facts of her testimony were substantiated by her son, Robert L. Ramsey, who also testified. In the record is the testimony of J. S. Dungey, who was also employed as a guard at the Illinois Security Hospital. He testified that he had known the deceased for many years and that his health was apparently good at the time he commenced his employment at the Illinois Security Hospital; that it was necessary to come in close contact with the patients at the institution; that there were three tubercular patients in said Ward C-4 during the time the deceased was employed there, and that the only ventilation was the windows; that during the fall and winter the air was bad in the ward, as the windows could be opened but very little. There is no other evidence, medical or otherwise,

that deceased contracted the disease of tuberculosis from his exposure to tubercular patients in the course of his employment by respondent. Claimant has attempted to prove general or ordinary negligence by respondent, which the record before us does not establish without the Court indulging in speculation and surmise. However, it is unnecessary to go further into this question, as proof of general or ordinary negligence is not sufficient to permit recovery under Section 3 of the present Occupational Diseases Act.

Claimant, in her complaint, predicates her recovery under said Section 3. In construing this section the Court said, in the case of *Grutzius* v. *Armour & Company*, 312 Ill. App. 366, on page 376:

"In our opinion the language used in the proviso in Section 3, heretofore set forth, is plain and understandable and really not open to construction. It states as clearly as language can that the violation by any employer of any effective rule or rules made by the Industrial Commission pursuant to the Health and Safety Act or the violation by the employer of any statute of this State intended for the protection of the health of employees, shall be and constitute negligence of the employer within the meaning of this section.

Thus actionable negligence under this section is clearly defined and the proviso excludes any action by an employee for an employer's negligence except as defined!'

This Court allowed recovery under said Section 3 in the case of *Wheeler* v. *State*, 12 C.C.R. 254, where there was a violation of a statute. The Court also denied the claim in the case of *McNutt* v. *State*, 17 C.C.R., and stated therein that, to establish negligence within the meaning of this section, claimant must show respondent violated

(1) *A rule or rules of the Industrial Commission made pursuant to the Health and Safety Act, or*

(2) *Violated a statute of this State intended for the protection of the health of employees.*

It is not alleged in the complaint, nor is there any proof in the record which would show that the case at

bar comes within the construction placed upon said Section 3 by the cases hereinabove cited. Under the circumstances claimant's claim must be denied, as claimant must show by the evidence that the State is charged with negligence as defined in Section 3 of said Act.

For the reason stated, the claim is denied.

Hugo Antonacci, 502 Illinois National Bank Building, Springfield, Illinois, submitted his invoice for the sum of $47.00 for taking and transcribing the testimony in this case, which charge is fair, reasonable and customary. An award is therefore entered in favor of Hugo Antonacci in the sum of $47.00.

(No. 4133—Claimant awarded **$146.61.)**

EDWARD E. DOCKRY, Claimant, *vs.* **STATE** OF ILLINOIS, Respondent.

Opinion filed March 24, 1949.

N. T. AXMAN, Attorney for Claimant.

HON, IVAN **A.** ELLIOTT, Attorney General, and WILLIAM **J.** COLOHAN, Assistant Attorney General, for Respondent.

DEFECTS IN HIGHWAYS—DAMAGES DUE TO—*when State will make award.* Where a defect in a State highway exists for such a time as to constitute constructive notice to the State and an automobile is damaged and other expenses incurred due to such defect an award may be made.

BERGSTROM, **J.**

On November 16, 1948 claimant, Edward E. Dockry, filed his complaint seeking an award in the sum of $146.61 for property damage to his automobile alleged to have resulted from respondent's negligence in maintaining a dangerous condition on a State highway (Illinois Route 50) known as Cicero Avenue, in Chicago, Illinois.

The record consists of the Complaint, Transcript of

Evidence, Departmental Report, and Stipulation waiving brief of respondent and claimant.

Claimant, on his own behalf, testified that about 5:20 P. M. on January 15, 1947 he was driving North on the East side of Cicero Avenue approaching 40th Street, in Chicago, Illinois. It was dark, raining and hazy. As he was driving north along Cicero Avenue between 39th and 40th Streets traveling about 30 miles an hour, with his lights on, he was thrown violently; the car catapulted in the air and he lost control of the car. Upon getting out of the car he observed a hole in the pavement about 5½ inches deep, six feet long and varying in width up to twelve inches. There was no barricade or warning on the highway. His three tires were ruptured and drive shaft cracked. He expended a total of $112.94 for new tires, tubes, and for materials and labor for repairs, and produced receipts therefor which were received in evidence. He also expended $4.00 for towing, $3.65 for cleaning his suit and overcoat soiled by the accident and was deprived of the use of his car for approximately a week, and expended $27.02 for transportation during this period. These items of damage total $146.61.

Mr. K. A. Johnsen, an engineer employed by the Division of Highways, stated the department report incorporated the information lie had furnished following his examination of the scene of the accident. The day following the accident he observed the hole in the pavement. From his experience as an engineer and employee of the Division of Highways, in his opinion a failure or hole of that nature was due to a weakened subgrade and would not develop suddenly, and it probably happened' two or three weeks prior to the accident. On cross examination he testified that Cicero Avenue at the point in question was a highly travelled highway.

The Department Report, dated January 17, 1949, stated that contracts for widening and resurfacing Cicero Avenue between 33rd and 63rd Streets were completed on December 20, 1946. A gap eighteen feet wide mas left in the pavement on the east side of Cicero Avenue about forty feet north of the Sanitary District Canal for the purpose of affording a smooth connection with a private road and a gas main being constructed easterly from Cicero Avenue. While the gap remained open for about three weeks heavy rains saturated the subgrade and seeped under the east edge of the old pavement. Prior to the report of this accident there had been no finding of any defect at the location in question, and immediately thereafter temporary repairs were made and permanent replacement completed about March 22, 1947. The day following the accident the transverse depression measured approximately six and one-half feet long, four to ten inches wide and five and one-half inches deep.

The record supports a finding that the depression on this highly travelled highway in the absence of any barricade, lights or guards, constituted a hazardous condition, partisularly to a motorist on a dark and hazy evening, and that claimant was exercising reasonable care for his own safety. On similar facts we made an award in *Toler* v. *State,* 16 C.C.R. 315.

An award is therefore entered in favor of claimant, Edward E. Dockry, in the sum of $146.61.

(No. 4138—Claimant awarded $1,393.58.)

ALBERT C. LUTH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 24, 1949.

ABRAHAM B. LITOW AND J. MICHAEL MADDA, Attorneys for Claimant.

HON. IVAN A. ELLIOTT, Attorney General, and HON. WILLIAM J. COLOHAN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award for compensatzon under may be made.* Where a highway maintenance laborer, employed by the Division of Highways, Department of Public Works and Buildings, while shoveling cinders from a truck on to the icy pavement eccidentally falls on the pavement and is injured in consequence thereof, such injury arising out of and in the course of his employment, an award therefor may be made under the provisions of the Act.

ECKERT, C. J.

On November 27, 1947, the claimant, Albert C. Luth, employed by the respondent as a highway maintenance laborer in the Highway Division, Department of Public Works, while shoveling cinders from a moving highway truck on to icy patches on the roadway just north of the Northwest Highway in Des Plaines, Illinois, lost his balance and fell to the pavement. He was rendered unconscious and was immediately taken to the Des Plaines hospital. Subsequently, on the same day, he was removed to the Belmont Community Hospital where X-rays were taken. He was then allowed to return to his home.

Dr. H. W. Staple, who examined the claimant immediately following the accident, and under whose direction the X-rays were taken, found that claimant had suffered a concussion of the brain, fractures of the fourth, fifth and sixth right ribs, and coccygeal strain, with minimal coccygeal separation.

Claimant was treated by Dr. Staple for about two

months at home and returned to light work on January 20, 1948. He worked until August 10, 1948, when he complained of continual pain in his lower spine. Arrangements were then made by the respondent for an examination of claimant by Dr. H. B. Thomas, Professor Emeritus of Orthopedics, Illinois University, College of Medicine. The examination was made on August 30, 1948 and Dr. Thomas reported that X-rays disclosed hypertrophic arthritis in the lower lumbar spine and sacroiliac joints and a rough place in the coccyx. Claimant remained under the care of Dr. Thomas until December **3,** 1948, when he was discharged.

At the hearing before Commissioner Blumenthal, the claimant testified that he still experiences pain in his right arm; that it is numb when he lifts and is weak; that when he walks or climbs he tires easily, has pains in both legs which feel ''numb'' and "tired out''. He testified that his right side and back, especially in the region of his "tail bone", are painful. He further testified that his health was normal before the accident, but that since the accident he can only do limited work, and that a fellow workman "takes the brunt'' of the work.

Dr. S. F. Weiner, **a** specialist in orthopedics and traumatic surgery, testified on behalf of claimant. Dr. Weiner stated that he examined claimant on January 22, 1949. Clinical examination disclosed atrophy of the posterior aspect of the right chest including the shoulder blade with limitation of about fifteen degrees in the external and internal rotation. The Laseque leg raising test signs were positive on both sides aggravating pain in the back and indicating **a** restrictive involvement of the fascia extending down from the back to the leg. Dr. Weiner testified that X-rays showed fractures of the fourth, fifth and sixth ribs with an over-riding of approxi-

mately ¾ of an inch at the fourth rib; a coracoid process of the scapular; a distortion between the first and second sacral segments; a noticeable widening of the posterior portion of the sacro-coccygeal joint; and showed that the coccyx was bent forward. In the opinion of Dr. Weiner, the limitation of motion in claimant's right shoulder and in both legs is permanent.

At the time of the accident, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of the employment.

At the time of his injury, claimant was fifty years of age, married but had no children under sixteen years of age dependent upon him for support. His annual earnings were $2,640.00. His compensation rate is therefore the maximum of $19.50 per week.

Claimant was totally disabled from November 28, 1947 to January 19, 1948, inclusive. During that period he was paid for non-productive time $225.95. Since this was a period of 7 3/7 weeks, claimant was entitled, at a compensation rate of $19.50, to the aggregate sum of $144.85. Since he received $225.95, there has been overpayment of $81.10 which must be deducted from any award made in this case.

From the medical testimony, and from the report of the commissioner who observed claimant at the hearing, the court finds that claimant has sustained a 12½% permanent partial loss of use of his right arm and of his right and left legs. For this partial loss of use of his right arm, claimant is entitled to receive the sum of $19.50 per week for a period of 28⅛ weeks, or the sum of $548.44. For similar partial loss of use of each leg,

claimant is entitled to receive the sum of $19.50 per meek for a period of 23¾ weeks, or the sum of $463.12 for each leg. Claimant is thus entitled to receive the total amount of $1,474.68, from which must be deducted $81.10, the excess payment for non-productive time.

An award is therefore made in favor of the claimant in the sum of $1,393.58, all of which has accrued and is payable forthwith.

A. M. Rothbart was employed to take and transcribe the evidence at the hearing before Commissioner Blumenthal. Charges in the amount of $51.00 were incurred for these services, which charges are fair, reasonable and customary. An award is therefore entered in favor of A. M. Rothbart in the amount of $51.00, payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3025—Claimant awarded $1,850.19.)

ELVA JENNINGS PENWELL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 19, 1949.

JOHN W. PREIHS, Attorney for Claimant.

HON. IVAN A. ELLIOTT, Attorney General; HON. C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when allowance for continued medical nursing and hospital expenses will Be made under.* Where the Court has heretofore held under Section 8, Paragraph (a) of the Act that the claimant is entitled to such care as is reasonably required to relieve her of the effects of the injury, a claim for such services as have been reasonably required will be allowed under the Act.

DELANEY, J.

Claimant was injured on February 2, 1936, in an accident arising out of and in the course of her employment as a supervisor at the Illinois Soldiers' aiid Sailors' Children's School at Normal, Illinois. The injury was serious, causing temporary blindness and general paralysis. The facts are fully detailed in the case of *Penwell* v. *State,* 11 C.C.R. 365, in which an award was made to the claimant of $5,500.00 for total permanent disability, $8,215.95 for necessary medical, surgical, and hospital services expended or incurred to and including October 22, 1940, aiid an annual pension of $660.00. On February 10, 1942, a further award was made to claimant for medical and hospital expenses incurred from October 22, 1940, to January 1, 1942, in the amount of $1,129.82. On March 10, 1943, a further award was made to claimant for medical and hospital expenses from January 1, 1942, to December 31, 1942, in the amount of $1,164.15. On March 15, 1944, a further award was made to claimant for medical and hospital expenses from January 1, 1943, to and including September 30, 1943, in the amount of $853.07. On April 17, 1945, a further award was made to claimant for medical and nursing expenses incurred from October 1,1943, to and including February 28, 1945, in the amount of $1,955.29. On September 12, 1946, a further award was made to claimant for medical and nursing expenses incurred from February 28, 1945, to and including April 1, 1946, in the amount of $1,646.12. On June 5, 1947, a further award mas made to claimant for medical and nursing expenses incurred from April 1, 1946, to and including April 1, 1947, in the amount of $2,108.30. On April 19, 1949, a further award was made to claimant for medical and nursing expenses incurred from April 1, 1947, to and including April 1, 1948,

in the amount of $2,207.80. Claim is now being made for an additional award of $1,850.19 for medical and nursing expenses from April 1, 1948, to and including February 1,1949.

Claimant remains totally paralyzed from the waist down, the paralysis being of a spastic type; her physical condition has not improved. She has no control over her lower limbs, nor over her urine and faeces. From April 1, 1948, to and including February 1, 1949, she has been required, to relieve her of her injury, and to prevent deformity and to stimulate circulation, and for relief of bedsores, to employ and receive medical services and nursing attention. She remains helpless, requiring the services of nurses or attendants to move her to and from her bed, to change her bed clothing at least three or four times a day, to administer light treatment to the affected parts of her paralyzed body, and to rub her body with ointments prescribed by her physician. Because of the complete paralysis of her lower abdomen and legs, the functioning of her kidneys and bladder is impaired, and medical attention is required to flush these organs and to prevent infection arising from her impaired circulation and paralysis. The services of a physician are needed almost daily and must be rendered in her home.

Claimant has therefore employed a physician on a monthly basis at a charge of $90.00 per month, which is a lesser rate than ordinarily charged, and for which she seeks reimbursement, in the total sum of $900.00. Claimant also seeks reimbursement, at the rate of seventy-five cents per day, in the total amount of $229.50 for board and room of attending nurses. Such expenditure obviates the employment of both a day and a night nurse. In addition, claimant has expended, for nursing

services, $608.61, and for drugs and supplies, $112.08. She has submitted to the Court, with her verified petition, the original receipts and vouchers showing payment of these respective items.

This Court has heretofore held that under Section 8, Paragraph (a) of the Workmen's Compensation Act, claimant is entitled to such care as is reasonably required to relieve her of the effects of the injury. (*Penwell* v. *State*, supra.) There has been no change in claimant's physical condition to justify the denial of an award at this time. The services claimed appear to have been reasonably required and the charges to be reasonable and just.

Award is, therefore, made to the claimant for medical and nursing expenses from April 1, 1948, to and including February 1,1949, in the sum of $1,850.19, which has accrued and is payable forthwith. The Court reserves for future determination claimant's need for further medical, surgical and hospital services.

(No. 4094—Claimant awarded $1,500.00.)

ORA WESTERFIELD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion. filed ***April 19, 1949.***

COSTIGAN, WOLLRAB & YODER, Attorneys for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

NEGLIGENCE—OPERATION OF TRACTOR AT STATE FAIR—*damages caused by, when award will be made for injuries sustained by visitor at state fair due to will be allowed.* Where a visitor attending the Illinois State Fair is crushed and injured by a tractor operated by an employee of the Illinois State Fair, an award for such injuries and medical and other expenses incurred by claimant may be allowed.

EVIDENCE—RES IPSA LOQUITUR—*application* of *doctrine, when doc-*

trine of res ipsa loquitur will be applied. Where a visitor attending a state fair is crushed by a tractor operated by an employee of the fair, and no evidence is introduced to show negligence on the part of such employee, and such evidence conclusively shows that the tractor was under the control and management of the respondent, and the accident would not have occurred if the employee exercised proper care, the doctrine of res ipsa loquitur applies.

SCHUMAN, C. J.

The claimant, Ora Westerfield, of the town of McLean, Illinois, on August 12, A. D. 1947, was injured at the Illinois State Fair grounds at Springfield, Illinois, while attending the Illinois State Fair, by being knocked down and squeezed by a tractor operated by an employee of the Illinois State Fair. This injury occurred while the claimant was in a ticket booth purchasing a ticket for the races being held by the Illinois State Fair.

An ambulance mas called and claimant mas taken to first aid quarters; that thereafter an ambulance operated by Bisch & Son of Springfield, Illinois, was called and claimant was taken to St. John's Hospital where X-rays were taken. That while in the St. John's Hospital claimant was attended by William E. Farney, a physician and surgeon of Springfield, Illinois. That thereafter claimant was driven to his home in McLean.

There is no testimony in the record as to whether or not the acts of Chas. Bacon, an employee of the State of Illinois in the operation of the tractor was negligent. However, the evidence conclusively shows that the tractor was under the control and management of the respondent, and the accident is such that in the ordinary course of things would not have happened if the employee exercised proper care and that the doctrine of res ipsa locuiter arises in this case. There was no explanation in the record of how the accident happened nor was there any evidence of any negligence on behalf of the claimant.

There being no rebuttal to the prima facie case made by the claimant the facts are sufficient to support an award in favor of the claimant.

The evidence shows that the claimant sustained the following list of expenses as a result of the injury he received:

Bisch & Son ambulance	$ 5.00
St. John's Hospital	12.00
St. Joseph's Hospital	33.18
Dr. William E. Farney	5.00
St. Joseph's Hospital	98.25
Brokaw Hospital	10.00
Dr. Gordon Schultz	212.00
Special shoes	4.50
Dr. Smith	45.00
	$424.93

making a total of $424.93.

The evidence further showed that the claimant was engaged in the trucking business and before his injury operated a truck. In accordance with the medical testimony as testified to by Dr. Gordon Schultz, the claimant sustained injury to his feet and also a lung condition and that all of said injuries have not disabled the claimant in any way.

The testimony showed without dispute, that the average earnings of the claimant ran the same after the accident as before. The only testimony in the record is that the claimant had to pay out the sum of $50.00 for a truck driver.

The evidence is incomplete with reference to the continued necessity for an additional truck driver after October of 1947. The evidence showed that the claimant operated a school bus and received compensation for the same to the amount of $75.00 a month, starting around the fore part of October 1947. There is no evidence of any loss of earnings on the part of the claimant. How-

ever, there is some evidence that he mas incapacitated from doing any kind of work from the date of the injury on August 12, 1947 to the first part of October 1947. Any further evidence of incapacitation is inconclusive. There was evidence that he suffered some pain as a result of these injuries.

Claimant. is entitled to an award in the amount of $1500.00 to cover all medical expenses and injuries sustained, including loss of earnings, pain and suffering and all other damages.

An award is therefore entered in favor of the claim ant in the sum of $1500.00.

(No. 4104—Claimant awarded $561.50.)

COUNTY OF WILL, Claimant, *vs.* **STATE** OF **ILLINOIS,** Respondent.

Opinion filed April 19, ***1949.***

HON. **JOHN IRVING PEARCE,** State's Attorney, County of Will, State of Illinois, for Claimant.

HON. **IVAN A.** ELLIOTT, Attorney General, for Respondent.

HABEAS CORPUS—EXPENSES INCURRED BY COUNTY—*when allowed.* Where a county incurs expenses, costs, and fees in habeas corpus proceedings brought in such counties, involving non-residents of such counties who may be confined in State penal or charitable institutions, the county may be reimbursed for such expenses, costs, and fees in accordance with the provisions of Sections **37, 38** and **39** of Chapter 65 of the Illinois Revised Statutes **(1947).**

LANSDEN, **J.**

Claimant, the County of Will, Illinois, by Elmer **J.** Stephen, chairman of its Board of Supervisors, and by its State's Attorney, filed its verified complaint on July 9, 1948, making claim to the sum of $561.50 due claimant from respondent.

Jurisdiction is specifically conferred upon this Court in this type of case by Illinois Revised Statutes (1947), Chapter 65, Sections 37, 38 and 39; Chapter 37, Section 439.8.

Claimant seeks to recover from respondent under the authority of Sections 37, 38 and 39 of Chapter 65 of the Illinois Revised Statutes (1947), entitled "An Act to provide for imbursement (reimbursement) of counties within the State of Illinois for expenses, costs and fees incurred in habeas corpus proceedings in the courts of such counties involving non-residents of such counties who may be confined in State penal or charitable institutions."

Section 37 provides that the State of Illinois shall assume and pay to each county, wherein there is situated a State penal or charitable institution, the necessary expenses incurred by it and its officers, either by means of service rendered or otherwise, by reason of court proceedings in such county involving petitions for a Writ of Habeas Corpus, by or on behalf of, an inmate of a State penal or charitable institution who was not a resident of such county at the time of his commitment and mas not committed by any court therein.

The complaint complies with the provisions of Section 38 of the aforesaid statute, which requires the filing, by the appropriate State's Attorney, of a verified and itemized claim in this Court.

Section 39 of said statute defines the word "expenses" used in Section 37 to include all statutory costs and fees of county officers and the expenses incurred in providing juries, if any. Said section further provides that the money paid in payment of an award of this Court pursuant to this statute shall be treated and accounted

for as earnings of the office of the respective county officers.

The complaint alleges that the County of Will has situated within its borders the Illinois State Penitentiary, being a State penal institution. Exhibit "A" attached to the complaint lists one hundred and five individual petitions for Writs of Habeas Corpus filed by inmates of the Illinois State Penitentiary, which were presented to the Circuit Court of Will County, Illinois. Exhibit "A" further lists the $5.00 filing fee of the Clerk of the Circuit Court as provided by Section 31, Chapter 53 of the Illinois Revised Statutes (1947) for each petition. Exhibit "A" itemizes also total charges of $36.50 for photostatic copies of petitions required for seven of said petitions, photostatic copies of which were made at the request of the Attorney General. The case number of each petition, the name of the petitioner, the filing date of the petition, as well as the county of commitment of the respective petitioners, are set forth. The complaint alleges the respective petitioners were neither residents of Will County at the time of their commitment to the Illinois State Penitentiary, nor committed by any court of the County of Will, and that the instant claim has never been presented to any State department or officer or to any person, corporation or tribunal.

The above allegations of the verified complaint are not disputed; they are substantiated by the testimony of Paul V. Wunder, Jr., Clerk of the Circuit Court of Will County, Illinois, and the records of the office of the Clerk of the Circuit Court of Will County, Illinois, described as General Docket and Record, Volumes 22 and **23,** produced at the hearing held in the proceedings.

Mr. Wunder also testified that all petitioners in the petitions itemized in Exhibit "A" had been given leave

to file as poor persons, but that prior to the granting of such leave, a local rule of court provided that each petition must be accompanied by a statement from the record office of the penal institution showing the amount of money on deposit to petitioner's credit and if petitioner had sufficient funds on deposit, leave to file as a poor person was denied. Thereupon, the petition was returned to the psnal institution from which it was sent stating that the petition must be accompanied by a check in the sum of $5.00 before it could be filed.

The County of Will is entitled to an award for the reimbursable expenses claimed.

An award is therefore entered in favor of the County of Will, State of Illinois, in the sum of Five Hundred Sixty-one Dollars and Fifty Cents ($561.50).

(No. 4120—Claimant awarded $2,160.00.)

PAUL A. RICH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 19, 1949.

PAUL D. REESE, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award for compensation may be made under.* Where a common laborer, employed by the State under the Division of Highways, accidentally sustains injury to his right eye by being struck with a piece of concrete which flew from a chip hammer, resulting in the loss of sight thereof, and such injury arises out of and in the course of his employment, an award for compensation therefor may be made under the Act.

SCHUMAN, C. J.

Claimant, Paul Rich, was employed by the State of Illinois as a common laborer under the "Division of

Highways" and while so employed on October 3, 1947 in the discharge of his duties, sustained an injury to his right eye by being struck with a piece of concrete which flew from a chip-hammer while working on the State Highway Route U. S. 51 in Union County, about a mile south of Cobden, Illinois. That immediate notice was given to Mr. John P. Van, who was acting foreman of the claimant. Mr. Van offered to take Mr. Rich to a doctor, but he refused. On March 31,1948 Attorney Paul D. Reese of Jonesboro, Illinois, addressed a letter to Mr. William L. Miles of Coulterville, Illinois, a foreman in the maintenance branch of the Division of Highways, which letter was in the form of a notice of claim for compensation for claimant.

It was stipulated in the record by the parties that the statutory notice of injury was given within the time required by the statute and that notice of claim was made within that time.

That the claimant continued working until October 21, 1947, when the work was completed in the area and he was no longer employed by the Division of Highways. The claimant was examined by Dr. Glenn T. Tygett of Cape Girardeau, Missouri, a specialist in the diseases of the eye, ear, nose and throat. Dr. Tygett testified that he saw the claimant on June 9, 1948 and made an examination and that for all practical purposes the sight in the right eye was destroyed. He further testified that a cataract had developed as a result of his injury, and that he did not believe that an operation was advisable. He further testified that an operation would not be successful for the reason that the eye, after operated, could not be used with the other eye as a pair and that for all practical purposes the claimant was industrially blind in the right eye.

The evidence shows that the claimant was a temporary employee and was earning 90 cents an hour and eight hours constituted a normal working day and employees engaged in a similar capacity ordinarily worked not to exceed 200 days per year. Upon this basis the claimant's average weekly wage was $27.69 and his rate of compensation $18.00 per week.

From the undisputed medical testimony and the testimony of the claimant, himself, the claimant has a total loss of his right eye. In the case of *Juergens Bros. Co.* v. *Inds. Corn.*, 290 Ill. 420, at pages 423 and 424, the Court held :

"The question before this Court is whether or not this man has for all practical uses and purposes lost his eye. The application of laws of this character should not be made to depend upon fine-spun theories based upon scientific technicalities, but such laws should be given a practical construction and application. For all practical purposes when a person has lost the sight of an eye he has lost the eye, and to say that the statute providing compensation for the loss of the sight of an eye does not apply here because of the remote possibility of Kaage losing his good eye, whereby he can through artificial means gain a certain amount of use of the injured member, is to place a construction on a remedial act which deprives it of all practical effect. Such could not have been the intention of the legislature in passing this Act.

"We are of the opinion that the legislature did not intend that when a man has lost the use of one eye he should nevertheless be deprived of compensation for that loss because he might be unfortunate enough to lose the other eye and thereby gain a certain limited use of the eye first injured. We believe the true rule should be, that where, as here, the employee has lost all practical use of an eye, which practical use cannot be restored so long as he has his other eye, such amounts, in effect, to the loss of the eye, and that compensation for such loss should be paid to such employee under Paragraph (e) of Section 8 of the Compensation Act."

This case was affirmed in *Heaps* v. *Inds. Corn.*, 303 Ill. 443, at 447, and also in the case of *Hamilton Engineering Company* vs. *Ind. Corn.*, 339 Ill. 30, at pages **41** to **42.** After consideration of all the evidence and the statement, brief and arguments, plaintiff is entitled to an award based on total loss of his right eye, which amounts

to 120 weeks at $18.00 per week or $2,160.00. The Court finds that the claimant refused medical aid when he was offered medical attention by the Department of Highways and elected to secure his own medical attention and therefore his claim for $50.00 medical expense is denied.

The testimony on hearing by Commissioner Jenkins was transcribed by Arsicel Reese of Anna, Illinois, who has submitted a statement in the amount of $20.00 for said services. This charge is reasonable and proper. This is for the hearing on November 8, 1948. The testimony on hearing before Commissioner Jenkins was transcribed by Eileen Jones on December 6, 1948, who has submitted a statement of $10.00 for her services. This charge is reasonable and proper.

An award is therefore entered in favor of the claimant, Paul A. Rich, in the amount of $2,160.00 for the specific total loss of the use of his right eye, payable as follows:

$1,440.00 which has accrued, is payable forthwith;
$ 720.00 to be paid in weekly installments of $18.00 per week for a period of 40 weeks, beginning April 22, 1949.

An award of $100.00, to be paid by respondent to the State Treasurer of the State of Illinois as ex-officio custodian of the Workmen's Compensation Special Fund, to be distributed in accordance with the provisions of said Workmen's Compensation Act.

An award is also made in favor of Ariscel Reese for stenographic services in the amount of $20.00 which is payable forthwith.

An award is also made in favor of Eileen Jones for stenographic services in the amount of $10.00 which is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4124—Claimant awarded $943.58.)

CECELIA E. ROTHERY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 19, 19/19.

WARNER & WARNER, by HENRY C. WARNER, Attorney for Claimant.

HON. IVAN A. ELLIOTT, Attorney General, and SAMUEL RUBIN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award for compensation under may be made.* Where an attendant at the Dixon State Hospital in the Department of Public Welfare, while assisting patients in the course of her duties, slipped on a wet flpor, fell and broke her hip, an award for compensation therefor may be made under the Act.

SCHUMAN, C. J.

Claimant, Cecelia Elizabeth Rothery, was employed on March *23,* 1948, as an attendant at the Dixon State Hospital in the Department of Public Welfare. On that day while assisting certaiii patients in the course of her duties, she slipped on a wet floor, fell, and broke her hip. Claimant, 65 years of age, was immediately taken by wheel chair to appropriate section of the hospital for treatment. Claimant mas suffering severe pain in her hip which became swollen.

No jurisdictional question is raised. Respondent and claimant were operating under the Workmen's Compensation Act and the accident in question arose out of and in the course of the employment.

Respondent furnished complete surgical, medical and hospital treatment. On September 30 claimant received her last medical attention from respondent. About that time she applied for re-employment with the managing officer of the Dixon State Hospital. Claimant's application was refused. On October 9, 1948 she obtained new employment at the Katherine Sham Bethea Hospital,

Dixon, Illinois, at **a** salary of $110.00 per month, plus room and board. Previously while employed by respondent, she had earned $175.00 per month from which $32.00 per month was deducted for room and board. The only question is the extent of permanent and complete loss of use of claimant's left leg.

Dr. Alexander Tarnowski, physician and surgeon, on the staff of the Dixon State Hospital since 1930, attended and treated claimant for her injury. He first examined the claimant on the morning of the following day. Regarding his examination Dr. Tarnowski testified:

"I found that she had a comminuted fracture of the left femur through the greater trochanter. She had eversion of the left foot which was the usual symptom of a fracture of the hip. She was in severe pain and it was impossible to move her hip joint. There was some swelling and all the other signs that accompany fracture of the hip. It was impossible to transport her to the X-ray room because of pain and we had no portable X-ray at the time so we asked assistance from the **Dr.** Murphy Clinic and he brought his own portable X-ray and the X-ray was taken. . . .

. . . The X-ray showed comminuted fracture through the greater trochanter in the left hip or femur."

Surgery was performed by Dr. Tarnowski and Dr. Murphy and a Steinman pin traction was applied.

Claimant remained under the traction until Map 28th when the pin was removed as X-rays showed considerable callous formation around the fracture site. Mrs. Rothery's condition further improved and on August 24th she was permitted to leave her wheel chair on crutches. Shortly thereafter she left the hospital. When next treated by Dr. Tarnowski at the end of September, she walked with the aid of a cane which claimant continned to use until recently. Claimant was described as suffering a two inch shortening of her left leg as **a** permanent deformity, also, about 35° eversion of her left foot. Dr. Tarnowski explained that eversion means that the foot

is turned outward. The present back pain suffered by claimant when walking was ascribed to the shortening of the left leg and the resultant strain on the muscles of the back causing sclerosis, a permanent development.

He added that in about 25% of the cases of like injuries to persons of claimant's age a resorption of the head of the femur may result; a very serious complication.

The facts show from the testimony of Dr. Tarnowski that the claimant has suffered a 30% permanent complete loss of the use of her left leg as a result of the accident and that the claimant's meekly compensation is $19.50.

From the record, the claimant is entitled to receive compensation for total temporary incapacity from March 24, 1948 for a period of 27 weeks and two days, which mould be in the amount of $532.08. She is also entitled to receive the additional sum of $1,111.50 for 30% permanent and complete loss of the use of her left leg as a result of said accident. From these amounts must be deducted the sum of $700.00 paid to claimant for unproductive time.

The amount of temporary total disability due and weekly payments on a specific loss of a leg to April 15, 1949 mould be $1,078.08, deducting $700.00 from this amount would leave $378.08 due as of April 15, 1949.

An award is therefore entered in favor of the claimant in the amount of $943.58 payable as follows:

$378.08 which has accrued and is payable forthwith;
$565.50 payable in 29 weekly installments of $19.50 each.

Madolin M. Hackett, reporter, has rendered a statement for $25.00 for the reporting and transcribing of the notes.

An award is therefore entered in favor of Madolin

M. Hackett, for reporting and transcribing the testimony in this case in the amount of $25.00.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4126—Claimant awarded $255.35.)

MAURICE HASSELL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 19, 1949.

A. F. ALLEN, Attorney for Claimant.

HON. IVAN A. ELLIOTT, Attorney General, for Respondent.

CHARITABLE INSTITUTIONS—DAMAGES CAUSED BY ESCAPED INMATES OF —SECTION 372 A, CHAPTER 23 OF ILLINOIS REVISED STATUTES (1947) RELATING TO—*when contpensataon for damages may be made under.* Where escaped inmates of the Illinois State Training School for Boys at St. Charles, Illinois, stole an automobile, which was recovered, damaged the same, and pilfered the contents of the automobile, leaving their uniforms of the school, an award for damages may be made under Section 372 A, Chapter 23 of the Illinois Revised Statutes (1947).

LANSDEN, J.

This claim is based upon Section 372a of Chapter 23 of Illinois Revised Statutes (1947) entitled "An Act concerning damages caused by escaped inmates of charitable institutions over which the State has control", reading as follows:

372a. Claims for damages by inmates of charitable institutions. Whenever a claim is filed with the Department of Public Welfare for payment of damages to property, or for damages resulting from property being stolen, heretofore or hereafter caused by an inmate who has escaped from a charitable institution over which the State of Illinois has control while he was at liberty after his escape, the Department of Welfare shall conduct an investigation to determine the cause, nature and extent of the damages inflicted and if it be found after investigation that the damage was caused by

> one who had been an inmate of such institution and had escaped, the said Department may recommend to the Court of Claims that an award be made to the injured party, and the Court of Claims shall have power to hear and determine such claims.

The above quoted statute and Section 8A of the Act creating the Court of Claims, Illinois Revised Statutes (1947), Chapter 37, Section 439.8, specifically confer jurisdiction upon this Court to determine the case herein involved.

The record in this case consists of complaint, departmental report, transcript of evidence, commissioner's report, and stipulation waiving briefs of both parties, an examination of which discloses the following :

On the evening of June 17,1948, at about 11:00 P.M., Maurice Hassell, claimant, parked his Cadillac automobile in front of his home at 537 West Main Street, Batavia, Illinois. At that time the automobile was locked and in good running coiidition and mechanical condition, and contained approximately ten gallons of gasoline in its storage tank. Also, several items of personal property of the claimant mere in the automobile including a bowling ball, bag and shoes, a man's sport shirt, a pair of men's street shoes, a new woman's dress and a man's business suit. During the night the automobile was stolen. The automobile was repossessed June 21, 1948, in Chicago. The items of personal property were missing. When found, the automobile was damaged and in very poor mechanical condition. The electric wiring was cut—-apparently at the time of theft to start the car in view of the locked ignition system.

Two work uniforms and two pair of work gloves were found in the automobile when it was repossessed by claimant. The uniforms were traced by identification number to a certain cottage of the nearby Illinois State

Training School for Boys at St. Charles, Illinois. The respondent admits that two inmates of this cottage escaped at 9:00 P.M. the evening of the theft of claimant's automobile. The said inmates at the time of their escape were working in the power house of the institution. The gloves found in claimant's automobile bore a heavy coating of coal and ash dust such as would be expected when worn on duty in and about the power house.

The total damages to claimant claimed as resulting from the above theft of his automobile include $10.00 payment for care of the automobile in the course of its reclamation; $2.00 for gasoline; $82.85 for automobile repairs and $140.50 for loss of the above described items of personal property. Mr. Hassell, a trucking company manager, made further claim for $20.00 for reimbursement for expenses caused by loss of use of his automobile during the four-day period and for sending one man to pick up the automobile.

The departmental report of respondent states in part as follows:

"The institution is of the opinion that the evidence known to itself as herein reported in the various sections of this report substantiates the representations of the claimant as true and as justly entitling claimant to the amount claimed in bill of particulars, after allowing all just credits.

". . . The Cadillac automobile was inspected by Mr. W. S. Ford, and the damage to fenders, ignition and wiring noted. Motor was started in the presence of Mr. W. S. Ford and performance was noted to be very irregular and noisy.

". . . The pertinent facts of the claim appear to be borne out by the facts known to the institution to be true; namely, the time of the reported runaway of the two named inmates, the finding and return of certain articles of clothing by the claimant in his car upon its return to him and which articles of clothing were unquestionably worn by the missing inmates, being clearly identified as belonging to Hayes Cottage, the cottage to which said inmates were assigned on the date of their escape. Furthermore, the records indicate no other missing inmates

from Hayes on June 17th, 1948. The institution would therefore offer no objection to a favorable judgment on behalf of the complainant."

The value of the items of personal property stolen was adequately proven, and the costs of parts and labor required to repair the automobile are fair and reasonable.

The record discloses compliance with the above quoted provisions of the special statute for this type of case, and in accordance with previous decisions of this Court, *Carls* vs. *State*, 15 C.C.R. 26, 29; *Johnson* vs. *State*, 15 C.C.R. 126, claimant is entitled to be reimbursed for the items of damage claimed.

An award is therefore entered in favor of Maurice Hassell, claimant, in the sum of Two Hundred Fifty-five Dollars and Thirty-five Cents ($255.35).

(No. 4116—Claim denied.)

LEO VOGT AND WILLIAM FISTE, Claimants, *vs.* STATE OF ILLINOIS, Respondeut.

Opinion filed May 12, 1949.

PAUL D. PERONA, Attorney for Claimants.

HON. GEORGE F. BARRETT, Attorney General, and ARCHIE I. BERNSTEIN, Assistant Attorney General, for Respondent.

ROADS—WET CONDITION—SKIDDING OF AUTOMOBILE ON—*when the State is not liable for injuries and damages caused* by. Where the claimants driving an automobile, and the automobile skidded on wet gravel roadway and struck the rail guard of a narrow wooden bridge, causing the automobile to nose into the ditch, held that the proximate cause of the accident was the skidding of claimants' car; that the condition of the bridge had nothing to do with the skidding and that the State could not be liable for the injuries and damages sustained by the claimants.

SCHUMAN, C. J.

On the morning of May 2, 1948, Leo Vogt, claimant, of Princeton, Illinois, was driving his Plymouth auto-

mobile with claimant, William Fiste, as passenger. They were en route to attend a Sunday baseball game in Peoria, Illinois. They were proceeding in a southeasterly direction at about 15 miles per hour along a detour of Route No. 29 at Sparland. The road, narrow and winding, was of gravel and wet from a recent rain. They rounded a curve and suddenly came upon a wooden bridge of about ten foot width built at a sharp angle from their direction of travel. The testimony of claimant, Leo Vogt, Record Page 6, showed that he was trying to slow his car and make the curve approaching the bridge at the same time and because of the wet condition of the road, his car skidded and went to the left-hand side of the bridge and the upright end of the guard rail caught under the high point of his left front fender; that Vogt attempted to release his car causing the guard rail to collapse and causing his car to nose into the ditch.

Respondent's Exhibit 1 showed that winding road signs were placed along the detour and that a number of small one-way bridges were along said detour; that at the bridge in question two signs were placed showing "Slow" and "Narrow Bridge" on a single post and the other showing a maximum acceptable load limit of five tons. That red flags had been placed at both ends of the bridge in question to serve as warning signals.

The evidence clearly shows that the proximate cause of the accident was the skidding of claimant's car, connected with his operation of the car in attempting to disengage it from the guard rail. That the condition of the bridge had nothing to do with the skidding and all of the facts show that the State could not be liable for the injuries and damages sustained by the claimants.

The record is lacking in showing any negligence on the part of the State of Illinois which caused the acci-

dent, and therefore each of the claims filed by Leo Vogt and William Fiste is denied.

(No. 4143—Claim denied.)

BEN CHEW, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1949.

R. W. HARRIS, Attorney for Claimant.

HON. IVAN A. ELLIOTT, Attorney General, and C. A. NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award for compensation under will be denied.* Where the claimant, employee of the Department of Public Works and Buildings, Division of Highways, in the course of his employment in a garage, stepped in a pool of liquid floor cleaner, slipped and fell to the floor fracturing his left wrist, and received full salary for four days lost, and there was no evidence that claimant had a permanent partial disability of the hand or permanent partial disability of the arm, an award will be denied.

SCHUMAN, C. J

The claimant was an employee of the Department of Public Works and Buildings, Division of Highways. He was 45 years of age, married and had no children under 16 years of age dependent upon him for support.

On July 23, 1948, at the Division's garage 1.5 miles west of Carbondale, Jackson County, Illinois about three o'clock in the afternoon, Mr. Chew was walking across the garage floor to secure some rags to be used in cleaning greasy automotive parts. He stepped in a small pool of liquid floor cleaner, slipped and fell to the floor fracturing his left wrist. The Division had Mr. Chew taken to his family physician, Dr. William Gardiner, Herrin, Illinois immediately following the accident.

Mr. Chew lost time because of his injury from July 24 to July 27, 1948, inclusive, having returned to light work on July 28, 1948. He mas paid full salary for the

four days lost time in the amount of $30.58. He remained on the payroll of the Department of Public Works and Buildings on his regular salary until December 31, 1948.

The evidence further shows that the Division of Highways paid the bill of Dr. W. R. Gardiner in the amount of $61.00.

The doctor's report, dated February 7, 1949, shows that Mr. Chew sustained a fracture of the distal end of radius of left arm. That the fracture is healed and that he had good functional use of the arm. That there was some enlargement of the wrist joint and pain in arm on extreme pronation and supination of the arm, and that he did not have full flexion of hand on lower arm, and that extension is normal.

Claimant testified on February 9, 1949 that he felt a numb pain below the elbow; that he was able to grasp and that he did not believe that there was any enlargement of the wrist compared to that of the right hand. The only evidence shown is that the left wrist is enlarged a quarter of an inch as shown by the measurements of the Commissioner.

There is no testimony in the record that the claimant had a permanent partial disability of the hand at the time of the hearing or any permanent partial disability of the left arm due to the accident in question.

There is no testimony that he is unable to do or perform any work. The record being devoid of testimony as to any permanent injury of the left arm at the time of the hearing, an award will have to be denied.

An award is made in favor of Mrs. Imogene Ward Steph, for stenographic services in the amount of $19.53, which is payable forthwith subject to the approval of the Governor.

(No. 4097—Claim denied.)

MARTIN E. MCNEELA, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 17, 1949.

LEONARD J. RHUE, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, by ARCHIE BERNSTEIN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award of compensation will be denied under the Act.* Where an employee of the Service Recognition Board, while on an automatic elevator at the place of his employment, was injured by the falling of the upper door striking the claimant on the head, resulting in scalp wounds, the use of the elevator having been forbidden, and not used by claimant for the purpose of his employment at the time of the accident, and no medical testimony being submitted to sustain any showing of compensable injury, the claim was denied.

SCHUMAN, C. J.

The complaint alleges that on May 11, 1948, claimant, Martin E. McNeela, of Chicago, Illinois, was injured by reason of an accident arising out of and in the course of his employment by the respondent while working for the Service Recognition Board at 218 W. Monroe Street, Chicago, Illinois. Claimant, 19 years of age, a clerk typist, was employed at the rate of $1,900.00 a year. Claim is made for medical care and attendance, temporary total disability, partial disability, and for serious and permanent disfigurement to his head and scalp.

On the day of the accident, claimant and his supervisor, Richard William Bauch, entered the freight elevator, push-button self-operable type, situated at the rear of the offices on the second floor of the building at the above address. Several of the personnel from the other offices of the Service Recognition Board located on upper floors of the building were on the elevator. The

time was approximately 3:15 o'clock in the afternoon. The elevator proceeded to the first floor. The elevator door consisted of two sections which opened by sliding up and down, instead of to the side. When the bottom half of the door lowered, the upper half simultaneously raised. Mr. McNeela and Mr. Bauch opened the elevator door. They apparently pushed the lower half of the door too hard. When it slammed the mechanism holding the upper half of the door released and the upper half of the door fell and struck both the claimant and Mr. Bauch, gashing the top of their heads. They were stunned as a result of the blow and bled from the scalp wounds so inflicted.

They received first aid and were immediately taken to the Henrotin Hospital, Chicago, Illinois, where their scalp wounds were treated. X-rays were taken of the claimant's body, shoulders, back and head. He was then taken home in a taxi and remained there for about three weeks before returning to work. Mr. McNeela continued his employment with the Service Recognition Board until August 21, 1948. He then obtained his present employment in capacity as a welder's helper for the Chicago Oiler Company. He now earns more money than he did when employed by the respondent, as aforesaid. The respondent paid all hospital, medical, and surgical expenses occasioned by the accident. He has not lost any time from employment since the accident; however, he complained of occasional headaches experienced since the accident. The scar resulting from the head wound is completely hidden by his hair and is practically unnoticeable when located upon inspection.

The respondent vigorously contested the claim on the ground that claimant was forbidden to use the freight elevators during break periods and except when author-

ized in the course of his duties. It was proved that, at the time of the accident occurring during the afternoon break period, claimant entered the freight elevator intending to proceed to the first, floor and out the building rear entrance to a nearby coffee shop. There is much conflicting evidence in the record respecting the right of claimant to use the freight elevator at the time he was injured and respecting notices posted and warnings given him forbidding the use of the freight elevator during break periods and except in the course of employment.

In the case at hand, however, there is no need to consider the question of claimant's right to compensation. Despite full opportunity afforded claimant to produce proof, the record is barren of any showing of compensable injury suffered by claimant.

The evidence showed that although given full opportunity, no medical testimony was submitted to sustain any showing of a compensable injury. In fact a letter was introduced by claimant's attorney recommending a finding against claimant.

This is also true of the alleged claim for disfigurement as contemplated by the Workmen's Compensation Act.

The evidence further shows that the alleged injury occurred during a break, or rest period. In using the elevator at such period, as shown by the evidence, claimant was not performing any act for his employer in the course of his employment. The risk assumed by claimant in the use of the elevator was not attendant upon his employment. In fact the instructions were not to use it during this period. The injury, if any, did not occur to the claimant while performing some act for his employer in the course of his employment or incidental to it.

The testimony on the hearing before Commissioner Young was taken and transcribed by A. M. Rothbart, who has submitted a statement for $89.50 for his services. This charge is reasonable and proper.

Claim of Martin E. McNeela is denied.

Award is made in favor of A. M. Rothbart for stenographic and reporting service in the amount of $89.50, which is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4098—Claim denied.)

RICHARD W. BAUCH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 17, 1949.

LEONARD J. RHUE, Attorney for Claimant.

HON. GEORGE F. BARRETT, Attorney General, by ARCHIE BERNSTEIN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION *ACT—when award for compensation for injuries will be denied.* Facts and decision arising out of the same circumstances as *McNeela* vs. *State* of *Illinois*, Claim No. 4097.

SCHUMAN, C. J.

The complaint alleges that on May 11, 1948 claimant, Richard W. Bauch, of Chicago, Illinois, was injured by reason of an accident arising out of and in the course of his employment by the respondent while working for the Service Recognition Board at 218 W. Monroe Street, Chicago, Illinois. Claimant, 23 years of age, a clerk typist, was employed at the rate of $2,200.00 a year. Claim is made for medical care and attendance, temporary total disability, partial disability, and for serious and permanent disfigurement to his head and scalp.

On the day of the accident, claimant and another clerk typist, Martin E. McNeela, entered the freight elevator, push-button self-operable type, situated at the rear of the offices on the second floor of the building at the above address. Several of the personnel from the other offices of the Service Recognition Board located on upper floors of the building were on the elevator. The time was approximately 3:15 o'clock in the afternoon. The elevator proceeded to the first floor. The elevator door consisted of two sections which opened by sliding up and down, instead of to the side. When the bottom half of the door lowered, the upper half simultaneously raised. Mr. Bauch and Mr. McNeela opened the elevator door. They apparently pushed the lower half of the door too hard. When it slammed the mechanism holding the upper half of the door released and the upper half of the door fell and struck both the claimant and Mr. McNeela, gashing the top of their heads. They were stunned as a result of the blow and bled from the scalp wounds so inflicted.

They received first aid and were immediately taken to the Henrotin Hospital, Chicago, Illinois, where their scalp wounds were treated. X-rays were taken of the claimant's body, shoulders, back and head. He required about 17 stitches for the cut received on his head. He was then taken home in a taxi and remained there for about two weeks before returning to work. Mr. Bauch continued his employment with the Service Recognition Board until September 10, 1948. He then obtained his present employment in the United States post office. He now earns less money than he did when employed by the respondent, as aforesaid. The respondent paid all hospital, medical, and surgical expenses occasioned by the accident. He has not lost any time from employment

since the accident; however, he complained of occasional headaches experienced since the accident. The scar resulting from the head wound is completely hidden by his hair and is practically unnoticeable when located upon inspection.

The respondent vigorously contested the claim on the ground that claimant was forbidden to use the freight elevators during break periods and except when authorized in the course of his duties. It was proved that, at the time of the accident occurring during the afternoon break period, claimant entered the freight elevator intending to proceed to the first floor and out the building rear entrance to a nearby coffee shop. The testimony disclosed he so proceeded to save time otherwise required by going to the front stairway or elevator and then around the outside of the building to the coffee shop. There is much conflicting evidence in the record respecting the right of claimant to use the freight elevator at the time he was injured and respecting notices posted and warnings given him forbidding the use of the freight elevator during break periods and except in the course of employment.

In the case at hand, however, there is no need to consider the question of claimant's right to compensation. Despite full opportunity afforded claimant to produce proof, the record is barren of any showing of compensable injury suffered by claimant.

The evidence showed that although given full opportunity, no medical testimony was submitted to sustain any showing of a compensable injury. In fact a letter was introduced by claimant's attorney recommending a finding against claimant.

This is also true of the alleged claim for disfigure-

ment as contemplated by the Workmen's Compensation Act.

The evidence further shows that the alleged injury occurred during a break, or rest period. In using the elevator at such period, as show nby the evidence, claimant was not performing any act for his employer in the course of his employment. The risk assumed by claimant in the use of the elevator was not attendant upon his employment. In fact the instructions were not to use it during this period. The injury, if any, did not occur to the claimant while performing some act for his employer in the course of his employment or incidental to it.

The testimony on the hearing before Commissioner Young was taken and transcribed by **A.** M. Rothbart, who has submitted a statement for **$89.50** for his services. This charge is reasonable and proper.

Claim of Richard William Bauch is denied.

Award is made in favor of **A.** M. Rothbart for stenographic and reporting service in the amount of **$89.50.**

This award **is** subject to the approval of the Governor, as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 4099—Claimant **awarded** $100.00.)

HOMER **ADAMS,** Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opanion *filed June 17, 1949.*

KERN AND PEARCE, Attorneys for Claimant.

HON. **IVAN A.** ELLIOTT, Attorney General, for Respondent.

NEGLIGENCE—LIGHTED FLARES BY DIVISION OF HIGHWAYS— When *lighted flares placed adjoining a highway by employees of Division of Highways make State liable for damage caused.* Where **employees of**

the Division of Highways placed lighted flares adjoining a highway which ignited claimant's field of lespedeza destroying approximately ten acres of the claimant's crop, the respondent was negligent in the performance of its duty and claimant was entitled to an award.

DAMAGES—TO GROWING CROPS—*measure of.* The measure of damages to growing crops is the value of the crops at the time when destroyed with the right of the owner to mature and harvest them at the proper time.

DELANEY, J.

By the complaint, which was filed on June 28, 1948, claimant alleges, in substance, that he is the owner of the property described as Northwest Quarter of Section Twenty-two (22), Township Five (5) South, Range Nine (9) East of the Third Principal Meridian, White County, Illinois; that Illinois State Highway Route No. 14 runs east and west immediately adjoining said northwest quarter section on the north side thereof. That during the crops season of 1947 claimant had growing a crop of lespedeza on twenty-five acres of above described land in the northwest corner thereof, and immediately adjacent to the right-of-way of said State highway. That on October 6, 1947, while Division of Highways employees of the State of Illinois were making repairs on said State Highway Route No. 14 at the close of the working day, lighted flares were placed on the slope behind the gutter of the highway, in and near a heavy growth of dry vegetation. It was established by the testimony of the witnesses that a fire originated near one of the lighted flares, apparently carried by a high wind, progressed up the back slope of the right-of-way of said State highway and into the claimaiit's field of lespedeza destroying approximately ten acres of claimant's crop.

The Court is of the opinion that the respondent was negligent in the performance of its duty to the farming public by failing to place lighted flares in a safe place.

The claimant in his complaint and on direct and cross-examination has introduced different figures as to his damages sustained, but the Court is of the opinion that the value of the growing crop was correctly set forth in the complaint.

In an action to recover for injury to growing crops, the measure of damages is the value of the crops at the time when destroyed with the right of the owner to mature and harvest them at the proper time. *St. Louis Bridge Ry. Association* vs. *Schultz,* **226** Ill. 409; and *Zuidema* vs. *Sanitary District of Chicago,* **223 Ill. App. 138.**

An award is therefore entered in favor of the claimant, Homer Adams, in the amount of One Hundred Dollars ($100.00).

(No. 4109—Claim denied.)

ILLINOIS CENTRAL RAILROAD COMPANY, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed June 17, 1949.

GRAHAM AND GRAHAM, Attorneys for Claimant.

HON. IVAN A. ELLIOTT, Attorney General, for Respondent.

CONTRACTS—UNAUTHORIZED—*when unauthorized contracts for demurrage charges are made by State employees, such contracts are null and void.* Where the acting managing officer of the Lincoln State School and Colony entered into a contract with the Illinois Central Railroad Company for the payment **of** demurrage charges, due to delay in unloading coal cars at the institution, such managing officer of a State charitable institution has no authority to make such an agreement and the same is null and void, and award was denied.

SAME—*same—notice* **of** *limitations.* Whoever deals with a State agency does so with notice **of** the limitations on it or its agent's power, and those who contract with it or furnish it supplies do so with reference to the law, and, **if** they go beyond the limitations imposed, they do so at their peril.

SAME—*same*—CONSTITUTIONAL LIMITATIONS—*when barred by.* **The** Constitution of the State of Illinois specifically precludes the payment

of any claim by the State under any agreement or contract made without express authority of the law and therefore such payment is barred by Section 4 of Article 19 of the Constitution.

DELANEY, J.

This is a claim by the claimant, Illinois Central Railroad Company, for demurrage on cars of coal and other commodities arising at the Lincoln State School and Colony, Lincoln, Illinois, during the months of May and June, 1947.

The evidence shows that during the months of May and June, 1947, the claimant delivered a number of cars on the siding to the respondent, the State School and Colony. The respondent, the State School and Colony, were notified by the claimant as each car was delivered, and the respondent in turn notified the claimant when the cars were unloaded.

The departmental report filed herein states in Paragraph 10 of the report that the unloading of all coal and other freights at the Lincoln State School and Colony was handled by inmates and employees of the institution. Certain employees were prevented from operating machinery which was used in unloading coal by the union of which the employees were members. This jurisdictional dispute prevented the clearing of materials along side of the tracks on the institution grounds and resulted in the delay in unloading the cars for which demurrage charges are now claimed.

The claimant contends that there was in force a contra& called ''An Average Agreement -- between the Illinois Central Railroad Company and the Lincoln State School and Colony under which the demurrage is to be computed. A copy of the purported agreement dated August 26, 1937, signed by one A. E. Causey as acting managing officer of the Lincoln State School and Colony

was admitted in evidence by the Commissioner over the objections of the respondent. Said agreement stated that it was to continue until termination, by written notice from either party.

The claimant states in its brief that a letter mas shown at the hearing before the Commissioner which was apparently a reply or answer to an inquiry previously made by the Attorney General, and that such letter mas not introduced and is not a part of the record herein. The letter to which the claimant refers is the report of the Department of Public Welfare, dated December 29, 1948, signed by Cassius Poust, Director. Said report has been filed in this cause, and a copy thereof delivered to the counsel for claimant under Rule 16 of the Court of Claims.

The report of the Department of Public Welfare is prima facie evidence of the facts set forth therein by Rule 16 of the Court of Claims which provides:

"All records and files maintained in the regular course of business by any State department, commission, board or agency, of the respondent, and all departmental reports made by any officer thereof, relating to any matter or case pending before the Court shall be prima facie evidence of the facts set forth therein; provided, a copy thereof shall have been first duly mailed or delivered by the Attorney General to the claimant or his attorney of record."

This Court has heretofore held that one dealing with an officer or agent of the State is to ascertain the extent of authority of said officer or agent to bind the State. It is clear that the managing officer of a State charitable institution has no authority to enter such an agreement, and that the purported agreement herein is null and void and of no effect. The executive and administrative supervisor of State charitable institutions is in the Department of Public Welfare by express statutory provisions.

In the case of *Illinois Central Railroad Company* vs.

State, 10 C.C.R. 493, the claimant sought an award for repairing a spur track which connected its railroad but which was owned by the State of Illinois and located on the grounds of the Kankakee State Hospital. The claimant had entered into a written agreement with the ground superintendent of the Kankakee State Hospital, and the repairs which required expenditures, both for labor and materials, had been completed. The Court held that the contract was invalid and that, therefore, the claim must be denied, and made the following statement:

"Counsel for claimant filed an able and persuasive reply brief but we are compelled to hold that whoever deals with a municipality does so with notice of the limitations on it or its agents' powers. All are presumed to know the law, and those who contract with it or furnish it supplies do so with reference to the law, and, if they go beyond the limitations imposed, they do so at their peril. This may seem unjust to the claimant but the answer to that is:

That it is better that a private individual suffer as plaintiff must do in this case than have this Court let down the bars and permit statutory enactments for the benefit of the public at large to be ignored so that the unscrupulous may unfairly and unjustly obtain public moneys. We cannot recognize or put the stamp of approval on the actions of the State officials in entering into such an informal contract."

The Constitution of the State of Illinois specifically precludes the payment of any claim against the State under any agreement or contract made without express authority of law. The purported agreement upon which this claim is based was made without express authority of law and therefore is barred by Section 4 of Article 19 of the Constitution of the State of Illinois of 1870 which provides as follows:

"The General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim, or Part thereof, hereafter created against the State under any agreement or contract made without express authority of law; and all such unauthorized agreement or contracts shall be null and void; provided, the General Assembly may make appropria-

tions for expenditures incurred in suppressing insurrection or repelling invasion."

For the reasons assigned, this claim must be denied. Award denied.

(No. 4117—Claimant awarded $4,896.52.)

HENRY VARNESS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 17, 1949.

FLOYD L. BENSON, Attorney for Claimant.

HON. IVAN A. ELLIOTT, Attorney General, by WILLIAM COLOHAN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award for compensation under may be made.* Where a laborer employed in the Department of Public Works and Buildings, Division of Highways, sustained accidental injuries by falling from a truck, and was permanently injured in consequence thereof, such injuries arising out of and in the course of his employment, an award for compensation therefor may be made under the Act.

SCHUMAN, C. J.

Claimant, Henry Varness, was employed on March 4, 1948 as a laborer by respondent in the Department of Public Works and Buildings of the Division of Highways. On that day, while throwing cinders on a pavement as he stood on a truck, claimant, 71 years of age, fell to the road. He was critically injured and was immediately taken to the office of Dr. E. J. Kabal, Sheridan, Illinois, and then rushed to the Horatio Woodward Hospital at Sandwich, Illinois.

No jurisdictional question is raised. Respondent and claimant were operating under the Workmen's Compensation Act and the accident in question arose out of and in the course of the employment. Respondent furnished complete surgical, medical and hospital treatment.

The only question is the extent of permanent disability suffered by claimant.

Dr. Kabal attended to the injuries of claimant. He testified he was familiar with claimant's general health prior to the accident and that claimant was an active man engaged in manual labor possessing vigorous health for his age. Dr. Kabal stated that when he first examined Mr. Varness on account of the injuries in question he was hemorrhaging badly out of his right ear and nose and his condition was that of an emergency. He directed claimant to be immediately taken to the hospital and followed in his automobile. Upon arriving at the hospital Dr. Kabal described claimant's condition as follows :

"As he was being lifted from the car I could hear the crepitous bones in his shoulder and back grinding. His pulse was irregular, he was in shock and actively bleeding as stated before from the right ear and nose, he was barely semi-conscious, trembled considerably, couldn't talk at all, his eyes rolled considerably, and he would not respond to external stimulae or speech."

The results of Dr. Kabal's complete examination thereupon made at the hospital were related :

"Mr. Varness' reflexes were inactive; he was in shock, and his behavior and symptoms already referred to were indicative of severe concussion of the brain and basilar skull fracture. No X-rays were taken as it was impossible to keep him quiet, but bleeding from the nose and ear is prima facie evidence of fracture of the skull. His blood pressure was very low being 70 systolic and 50 diastolic, and, his pulse was thready and intermittent. Compression fracture in the lumbar region of the spine, and fracture of the right transverse process of the third lumbar vertebrae were subsequently revealed by X-ray, but X-rays of the skull were unsatisfactory as even under medication he would not stay still. The injuries to the skull were later confirmed by Dr. E. W. Hagans, an ear specialist in Chicago."

Claimant was in a semi-conscious state for about three weeks requiring the attention of special nursing care. He was finally discharged from the hospital on April 14, 1948. At the time of discharge while he had

recovered from all fractures he was not able to sit up in a chair for more than a half hour period. He could not walk; tired easily; and suffered dizziness. However, it was determined that further hospitalization was of no advantage. Claimant was discharged from Dr. Kabal's care on June 30, 1948. Dr. Kabal said there was no medical treatment of which he had knowledge that could rehabilitate claimant's health. He described claimant as having lost his sense of balance tending to the right when walking; further, that Mr. Varness although using a cane cannot walk any distance without tiring to the degree that he begins to tremble. The claimant's hearing has been so acutely affected by the accident that it is impossible to get in touch with him by speech. Dr. Hagana in a report of the Division of Highways reported the loss on the right ear of 80.7 percent of hearing and on the left ear 100 percent of hearing. Dr. Kabal testified that the claimant as a result of the accident, has no capacity for gainful employment, and is beyond reasonable doubt completely, totally, and permanently disabled for work or employment.

Stipulation between the parties showed that the claimant during the year preceding the accident earned approximately $1,400.00, being at a wage rate of the labor maintenance man at 90 cents per hour on an eight hour day working 200 days per year; that the claimant at the time of said injury was 71 years of age aiid had no children under 16 years of age.

That all hospital expenses, medical expenses and other expenses have been paid by the respondent and there are no further claims made for such expenses.

From the undisputed medical testimony and the other testimony in the record it is shown that the claim-

ant is permanently disabled and has not been able, and is not able to do any work of any kind.

We conclude, therefore, that after a careful consideration of the record, that the claimant is entitled to an award for permanent total disability. We therefore make the following findings :

The claimant and the respondent were on the 4th day of March, 1948, operating under the provisions of the Workmen's Compensation Act; that on the date last mentioned above, said claimant sustained accidental injuries ; and that said accidental injuries arose out of and in the course of his employment; that notice of said accident was given. said respondent and claim for compensation on account thereof was made on said respondent within the time required under the provisions of said Act.

That the earnings of the claimant during the year next preceding the injuries were approximately $1,400.00.

That the claimant at the time of his injuries was 71 years of age and had no children under 16 years of age dependent upon him for support.

That all medical and hospital expenses and other expenses have been paid by the respondent, and that there are no further claims made for such expenses.

The claimant is therefore entitled to an award of $5,200.00, less the sum of $303.48, which sum was paid to the claimant for temporary total disability, or a total award of $4,896.52 payable as follows :

$1,171.16 which has accrued from March 5, 1948 to June 17, 1949, from which is deducted the sum of $303.48, making a sum of $867.68, which is payable forthwith;

$4,028.84 to be paid in weekly installments of $17.48 beginning June 24, 1949 for a period of 230 weeks with a final payment of $8.44; thereafter a pension for life in the sum of $416.00 annually, payable in monthly installments of $34.66.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awasds to State employees."

(No. 4132—Claimant awarded $1,666.87.)

CHARLES L. LEONARD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 17, 1949.

NEIL H. THOMPSON, Attorney for Claimant.

HON. IVAN A. ELLIOTT, Attorney General, and C. A. NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award for compensation under may be made.* Where an employee of the State, Department of Conservation, while performing duties assigned to him at the State Game Farm, and engaged in clipping wings of pheasants, was accidentally stabbed in the left hand by a fellow employee similarly engaged, and sustained a permanent partial loss of the first, second and third fingers, an award for compensation therefor may be made in accordance with the Act.

SCHUMAN, C. J.

Claimant, Charles L. Leonard, was employed by the State of Illinois, Department of Conservation, at the Game Farm at Mt. Vernon, Illinois on April 23, 1948. On June 24, 1948, claimant received an injury to his left hand while performing the duties assigned to him at the State Game Farm.

The claimant and another employee mere engaged in clipping wings of pheasants. The pheasants were chased from their pens into a small catching box from which they were removed in order to clip their wings. As the claimant reached to catch a bird his fellow employee also grabbed for the same bird and stuck claimant in the left hand with a pair of scissors, which he was holding.

Subsequent to his injury, claimant's left hand became infected and he was treated by Dr. Jean Modert of the Modert Clinic at Mt. Vernon, Illinois. Due to the infection of his left hand, the claimant sustained a partial loss to his first, second, third and fourth fingers of the left hand. That as a result of the disability he was temporarily totally disabled from work until August **23,** 1948.

No jurisdictional question is raised. Respondent and claimant were operating under the Workmen's Compensation Act, and the accident in question arose out of and in the course of employment.

The only question to be determined is the extent of the permanent partial loss of the use of the fingers in question together with the medical and hospital services furnished.

The evidence shows that the claimant sustained medical expenses in the amount of $100.00 which is due Dr. A. W. Modert as a result of said injuries, and also a hospital bill in the sum of $257.85 due to the Jefferson Memorial Hospital in Mt. Vernon, Illinois as a result of said injury, and the evidence shows that said bills are reasonable and unpaid.

There is nothing in the record to indicate the salary or the earnings of the claimant for the year preceding his injury, but there is no question that he would be entitled to the rate of $19.50 per week.

The evidence, and particularly respondent's medical witness, clearly establishes that the claimant has sustained a permanent partial specific loss of the first, second and third fingers to the extent of 85% and a permanent, partial specific loss of use of the fourth finger of the left hand to the extent of 50%.

On the basis of this record, we make the following award:

For the permanent, partial specific loss of the use of the first finger of the left hand, claimant is entitled to an award of $663.00 computed at the rate of $19.50 for 34 weeks, or 85% loss of use of the first finger.

For the permanent, partial specific loss of the use of the second finger of the left hand, claimant is entitled to an award of $580.13, being the weekly rate for a period of 29.75 weeks, or 85% of loss of use of the second finger.

For the permanent, partial specific loss of the use of the third finger of the left hand, claimant is entitled to an award of $414.38 for a period of 21.25 weeks at $19.50, or 85% loss of use of the third finger of the left hand.

For the permanent, partial specific loss of the use of the fourth finger of the left hand, claimant is entitled to an award of $195.00 being the weekly rate for a period of 10 weeks at $19.50, or 50% loss of use of said fourth finger, making a total award of $1,852.51. The evidence shows that during the period of temporary total disability the claimant was paid the sum of $350.00 or his full salary. From the total award should be deducted the sum of $185.64, representing an overpayment of money paid by respondent to claimant for temporary total compensation, leaving a balance of $1,666.87 for which an award is hereby entered in favor of claimant. Of this amount the sum of $808.86 has accrued as of June 17th, 1949 and is payable forthwith. The balance of said award amounting to $858.01 is to be paid in weekly installments of $19.50 for a period of 44 weeks commencing on June 24, 1949 with one final payment of $0.01.

An award is also entered in favor of Dr. A. W. Modert, for medical services in the sum of $100.00 which is payable forthwith.

An award is also entered in favor of the Jefferson Memorial Hospital in Mt. Vernon, Illinois in the amount of $257.87 for hospitalization, which is payable forthwith.

An award is also entered in favor of Gladys Berg, for stenographic services in the amount of $15.60, which is payable forthwith. The Court finds that the amount charged is a fair and reasonable charge and customary, and said claim is allowed.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

CASES IN WHICH ORDERS OF DISMISSAL WERE ENTERED WITHOUT OPINION

4006 Ezra Baker

4106 Janet Jameson

4183 Frank B. **Jones**

INDEX